
No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

LUCIOUS WILSON, Petitioner

vs.

J. SOTO, WARDEN, Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

HILARY POTASHNER
Federal Public Defender
MORIAH S. RADIN*
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012-4202
Telephone: (213) 894-2854
Facsimile: (213) 894-0081
Moriah_Radin@fd.org

Attorneys for Petitioner
LUCIOUS WILSON

** Counsel of Record*

INDEX TO APPENDIX

Page No(s)

Ninth Circuit Order Denying COA, entered June 22, 2018.....	1
District Court Order Denying COA, entered October 5, 2017.....	2
District Court’s Judgment, entered October 5, 2017.....	4
District Court’s Order Denying Relief, entered October 5, 2017.....	5
California Supreme Court Docket Showing Denial of Wilson’s Petition for Writ of Habeas Corpus, denied May 11, 2016	20
Portion of Wilson’s Petition for Writ of Habeas Corpus in the California Supreme Court, filed February 16, 2016.....	21
Los Angeles County Superior Court Order Denying Wilson’s Petition for Writ of Habeas Corpus, filed December 8, 2014.....	44
Excerpts of Reporter’s Transcript, filed May 16, 2017.....	47

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 22 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LUCIOUS WILSON,

Petitioner-Appellant,

v.

J. SOTO, Warden,

Respondent-Appellee.

No. 17-56555

D.C. No. 2:15-cv-05183-MRW
Central District of California,
Los Angeles

ORDER

Before: PAEZ and RAWLINSON, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

1
2
3
4
5
6
7
8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11

12
13 LUCIOUS WILSON,

14 Petitioner,

15 v.

16 J. SOTO, Warden,

17 Respondent.
18
19

Case No. CV 15-5183 MRW

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

20 Rule 11 of the Rules Governing Section 2254 Cases in the United States
21 District Courts requires a district court to issue or deny a certificate of appealability
22 when it enters a final order adverse to the applicant.

23 Under 28 U.S.C. § 2253(c)(2), a COA may issue “only if the applicant has
24 made a substantial showing of the denial of a constitutional right.” The Supreme
25 Court has held that this standard means a showing that “reasonable jurists could
26 debate whether (or, for that matter, agree that) the petition should have been
27 resolved in a different manner or that the issues presented were adequate to deserve
28

1 encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484 (2000)
2 (internal quotations omitted). The COA inquiry is only a “threshold question” to
3 determine whether a decision is “debatable.” It is made “without full consideration
4 of the factual or legal bases adduced in support of the claims.” Buck v. Davis, ____
5 U.S. ____, 137 S. Ct. 759, 773-74 (2017) (quotation marks omitted).

6 Here, after duly considering Petitioner’s contentions in support of his claims
7 regarding the sanity phase of his trial, prosecutorial misconduct, and ineffective
8 assistance as alleged in the petition, the Court concludes that Petitioner has not
9 made the requisite showing for the issuance of a Certificate of Appealability.

10 Accordingly, a Certificate of Appealability is denied in this case.

11
12
13 Dated: October 5, 2017



HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11

12
13 LUCIOUS WILSON,
14 Petitioner,
15 v.
16 J. SOTO, Warden,
17 Respondent.
18

Case No. CV 15-5183 MRW

JUDGMENT

19
20 IT IS ADJUDGED that the petition is denied and this action is dismissed
21 with prejudice.
22

23 Dated: October 5, 2017



24 HON. MICHAEL R. WILNER
25 UNITED STATES MAGISTRATE JUDGE
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

LUCIOUS WILSON,

Petitioner,

v.

J. SOTO, Warden,

Respondent.

Case No. CV 15-5183 MRW

**ORDER DENYING HABEAS
RELIEF**

28 U.S.C. § 2254

SUMMARY OF RULING

This is a habeas action involving a state prisoner. A jury convicted Petitioner of assault charges resulting from a dramatic incident at a fast food restaurant.

On federal review, the Court concludes that the state court decision denying Petitioner's claims was neither contrary to, nor an unreasonable application of, clearly established federal law. As a result, the Court denies federal habeas relief.

1 **FACTS AND PROCEDURAL HISTORY**

2 Petitioner walked into a McDonald's restaurant where his ex-girlfriend
3 worked. After a scuffle with several employees, Petitioner pulled out two large
4 knives that he pointed and waved at the restaurant's occupants. He ultimately
5 injured no one but himself – Petitioner cut his own neck, arms, and stomach with
6 the knives. The incident ended when local sheriffs disarmed Petitioner by
7 shooting him with high velocity bean bags.¹

8 Petitioner represented himself at trial. Evidence of his guilt came from
9 eyewitness and police testimony, surveillance video, and photographs of the
10 bloody aftermath. Petitioner testified in his own defense at the guilt and sanity
11 phases of the trial.

12 A jury convicted Petitioner of assault with a deadly weapon and exhibiting
13 a deadly weapon to resist arrest. (Lodgment # 1.) In a bifurcated bench
14 proceeding, the trial judge concluded that Petitioner was legally sane at the time
15 of the offenses. (Lodgment # 9, 4RT at 1539-2152.) With enhancements for
16 prior offenses, the trial court sentenced Petitioner to 13 years in prison.
17 (Lodgment # 2 at 2.)

18 In a reasoned, unpublished decision, the state appellate court affirmed
19 Petitioner's conviction and sentence. (Id. at 7.) The state supreme court denied
20 review without comment. (Lodgment # 4.) Petitioner subsequently presented
21 other claims on habeas corpus review in the state superior and supreme courts.
22 (Lodgment # 5, 7.) The state courts denied those claims. (Lodgment # 6, 8.)
23
24
25

26 ¹ For more gruesome details of the incident, see the results of
27 Petitioner's unsuccessful civil rights action in this Court. Wilson v. Cosio,
28 No. CV 12-9724 GW (MRW) (C.D. Cal.) (Docket # 58).

1 This federal action followed. In light of complex procedural issues,² the
 2 Court appointed the Federal Public Defender to represent Petitioner.

3 **DISCUSSION**

4 **Standard of Review Under AEDPA**

5 Under AEDPA, federal courts may grant habeas relief to a state prisoner
 6 “with respect to any claim that was adjudicated on the merits in State court
 7 proceedings” only if that adjudication:

8 (1) resulted in a decision that was contrary to, or involved
 9 an unreasonable application of, clearly established
 10 Federal law, as determined by the Supreme Court of the
 11 United States; or (2) resulted in a decision that was based
 12 on an unreasonable determination of the facts in light of
 the evidence presented in the State court proceeding.

13 28 U.S.C. § 2254(d).

14 In a habeas action, this Court generally reviews the reasonableness of the
 15 state court’s last reasoned decision on a prisoner’s claims. Murray v. Schriro,
 16 746 F.3d 418, 441 (9th Cir. 2014); Harrington v. Richter, 562 U.S. 86, 99 (2011).
 17 Here, the state superior court’s order denying habeas relief was the last reasoned
 18 decision addressing Petitioner’s ineffective assistance of appellate counsel claim.
 19 (Lodgment # 6.) The state supreme court subsequently denied habeas relief
 20 without comment. (Lodgment # 8.) The Court “looks through” that silent
 21 decision to the last reasoned state court ruling. Ylst v. Nunnemaker, 501 U.S.
 22 797, 803-04 (1991). The Court reviewed the appellate court’s decision for
 23 reasonableness. In doing so, the Court received and independently reviewed the

25 ² Petitioner’s original habeas action was timely, but was dismissed
 26 because it consisted of unexhausted claims. He subsequently filed a second
 27 action in this Court (No. CV 16-4110) that contained exhausted, but untimely
 28 claims. After extended briefing, the Court granted Petitioner relief from the
 judgment of dismissal in the original action. (Docket # 28.)

1 relevant portions of the state court record. Nasby v. McDaniel, 853 F.3d 1049,
2 1053 (9th Cir. 2017).

3 For Petitioner’s other three claims (also presented on state habeas review),
4 the superior court denied relief with brief reasoning and citations to a variety of
5 state court judicial decisions. Among them was a statement that, “assuming the
6 facts alleged in the petition are true, Petitioner fails to allege facts establishing a
7 prima facie case for habeas relief” and a citation to People v. Duvall, 9 Cal. 4th
8 464, 474-75 (1993). (Lodgment # 6.) A Duvall dismissal of a habeas petition
9 (unadorned by a reference to In re Swain, 34 Cal. 300 (1949)) typically signifies
10 that the state court understood – and reached – a prisoner’s constitutional claim,
11 “but determined that it lacked merit.” Seeboth v. Allenby, 789 F.3d 1099,
12 1103-04 and n.3 (9th Cir. 2015) (applying AEDPA deference to claim subjected
13 to Duvall denial); c.f. Curriel v. Miller, 830 F.3d 864, 867, 869 and n.2 (9th Cir.
14 2016) (en banc) (“We understand the California Supreme Court’s denial of a
15 habeas petition with citations to Swain and Duvall in conjunction as, in effect,
16 the grant of a demurrer, i.e., a holding that [the petitioner] ha[s] not pled facts
17 with sufficient particularity”; denial of state petition was “based solely on the
18 deficiency of his pleadings”) (quotation omitted).³

19 As a result, the Court presumes that the state court decision reached and
20 rejected the merits of Petitioner’s constitutional claims, and therefore is subject
21 to deferential review under AEDPA.⁴ Richter, 562 U.S. at 99; Johnson v.

22 ³ Based on the Court’s independent review of Petitioner’s pro se
23 petition in the state court, the Court agrees that his pleading was not so
24 conclusory or pled so deficiently that the state court would have been unable to
25 understand the gist of his claim. (Lodgment # 5, Docket # 33-1 at 3-8 and
attachments.)

26 ⁴ The Court declines to take up the Attorney General’s argument that
27 three of Petitioner’s claims are procedurally barred. The Attorney General is
28 undoubtedly correct that, in addition to the Duvall denial, the state superior court
also rejected these claims by reference to In re Dixon. Dixon stands for the

1 Williams, 568 U.S. 289, 301 (2013) (federal court ordinarily “must presume that
 2 [a prisoner’s] federal claim was adjudicated on the merits”). The Court must
 3 perform an “independent review of the record” to determine “whether the state
 4 court’s decision was objectively unreasonable.” Richter, 562 U.S. at 98. When
 5 the state court does not explain the basis for its rejection of a prisoner’s claim, a
 6 federal habeas court “must determine what arguments or theories [] could have
 7 supported the state court’s decision” in evaluating its reasonableness. Id. at 102
 8 (emphasis added); Espinoza v. Spearman, 661 F. App’x 910, 912 (9th Cir. 2016)
 9 (prisoner “still bears the burden of showing there was no reasonable basis for the
 10 state court to deny relief” on independent review) (quotation omitted).

11 ***

12 Overall, AEDPA presents “a formidable barrier to federal habeas relief for
 13 prisoners whose claims have been adjudicated in state court.” Burt v. Titlow,
 14 ___ U.S. ___, 134 S. Ct. 10, 16 (2013). On habeas review, AEDPA places on a
 15 prisoner the burden to show that the state court’s decision “was so lacking in
 16 justification that there was an error well understood and comprehended in

17 _____
 18 proposition that a prisoner is prohibited from asserting a claim on habeas review
 19 that could have been presented on direct appeal. There’s nothing unclear or
 20 ambiguous about that ruling – Petitioner certainly didn’t present his sanity phase
 and prosecutorial misconduct claims on appeal, and he surely could have.

21 But, to get past the Dixon bar, Petitioner goes after his cause-and-
 prejudice burden head on. Cooper v. Neven, 641 F.3d 322, 327 (9th Cir. 2011).
 22 He contends that his claim of ineffective assistance by his appellate lawyer (per
Martinez v. Ryan) serves as good cause for his failure to abide by the direct-
 23 appeal rule. And, as to prejudice, why, just look at the potential substantive
 merit of his underlying claims. (Docket # 39 at 12.) Maybe so. In surreply, the
 24 Attorney General says that those claims didn’t have a “reasonable potential of
 25 success” on appeal, so they can’t overcome the procedural bar here. Maybe, for
 you too.

26 But, given the Court’s conclusion that the state court did reach the merits
 27 of Petitioner’s claims on habeas review, the Court elects to analyze the claims
 under the deferential AEDPA standard (rather than under the somewhat more
 28 complicated Cooper test to uphold or knock down the procedural bar).

1 existing law beyond any possibility for fairminded disagreement” among
 2 “fairminded jurists.” Richter, 562 U.S. at 101, 103; White v. Wheeler, ___ U.S.
 3 ___, 136 S. Ct. 456, 461 (2015). Federal habeas corpus review therefore serves
 4 as “a guard against extreme malfunctions in the state criminal justice systems,
 5 not a substitute for ordinary error correction” in the state court system. Richter,
 6 562 U.S. at 102.

7 **Sanity Phase Claims (Grounds One and Four)**

8 Petitioner argues that, during the sanity phase of his trial, the trial court
 9 hindered his ability to prove insanity by refusing to order a witness to testify.
 10 Petitioner also claims the trial court was wrong to find that Petitioner was not
 11 legally insane at the time of the offenses.

12 **Relevant Facts**

13 After the jury convicted Petitioner, the court held a bench trial to
 14 determine whether Petitioner was legally insane when he committed the
 15 offenses. Petitioner had the burden to prove that he suffered from a mental
 16 disease or defect so severe that he could not understand the nature of his actions
 17 or distinguish right from wrong. (4RT at 1540, 2144, 2150); People v. Blakely,
 18 230 Cal. App. 4th 771, 774 (2014).

19 Petitioner called his ex-girlfriend and brother as witnesses. They testified
 20 about Petitioner’s history of mental problems, tragic childhood, and severe
 21 reactions to being separated from his children. (4RT at 1541-59, 65-67, 2128-
 22 30.) One psychiatrist who evaluated Petitioner after his arrest had no opinion as
 23 to whether Petitioner was legally insane at the time of the offenses. (4RT
 24 at 1842-46.) However, two court-appointed psychiatrists affirmatively testified
 25 that Petitioner was legally sane. (4RT at 1811-13, 2107-24.)

26 Petitioner sought to call a social worker from a parole outpatient clinic
 27 also. (4RT at 1502, 1848-2135.) Petitioner argued that the social worker
 28

1 evaluated him in greater detail than the doctors and could shine a better light on
2 his mental health. (4RT at 1849-50.) The social worker failed to appear at trial,
3 though. (4RT at 1848.) The court issued a body attachment (a form of material
4 witness warrant) and directed the prosecutor and Petitioner's appointed
5 investigator to contact the witness. (4RT at 1852, 1856-57.) Even so, the social
6 worker refused to come to court.

7 The trial judge delved further into the substance of the witness's proposed
8 testimony with Petitioner. Petitioner could not state whether the witness would
9 be able to testify he was legally insane during the crimes (he also did not know
10 the witness's professional background or credentials). (4RT at 2103-04.) The
11 court ruled that the social worker's testimony was inadmissible under California
12 Evidence Code section 352 because it would be cumulative to other evidence of
13 Petitioner's mental health, but not probative of the ultimate issue of his sanity.
14 The judge recalled the body attachment. (4RT at 2130-35, 2144.) The trial court
15 subsequently concluded that Petitioner failed to carry his evidentiary burden of
16 demonstrating that he was legally insane. (4RT at 2152.)

17 **Limitation on Sanity Defense (Ground One)**

18 Petitioner argues that the trial court materially limited his insanity defense
19 by failing to compel testimony from the social worker. (Docket # 1 at 5, 9-10;
20 # 39 at 9-11.) The Court independently but deferentially reviews this claim
21 because the state court's decision denying this claim was "unaccompanied by an
22 explanation." Richter, 562 U.S. at 99.

23 **Relevant Federal Law**

24 The Constitution guarantees criminal defendants "a meaningful
25 opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683,
26 690 (1986). The exclusion of certain types of critical evidence may violate a
27 defendant's due process rights if it deprives the defendant of "a fair opportunity
28

1 to defend against a state’s accusations.” Chambers v. Mississippi, 410 U.S. 284,
2 294 (1973).

3 However, a defendant “does not have an unfettered right to present any
4 evidence he or she wishes.” Lunbery v. Hornbeak, 605 F.3d 754, 762 (9th Cir.
5 2010) (quotation omitted). Rather, a criminal defendant must “comply with
6 established rules of procedure and evidence designed to assure both fairness and
7 reliability in the ascertainment of guilt and innocence.” United States v. Waters,
8 627 F.3d 345, 354 (9th Cir. 2010).

9 State rulemakers “have broad latitude under the Constitution to establish
10 rules excluding evidence from criminal trials.” Nevada v. Jackson, ___ U.S.
11 ___, 133 S. Ct. 1990, 1992 (2013) (per curiam) (citations omitted). Those rules
12 must not “be applied mechanistically to defeat the ends of justice.” Chambers,
13 410 U.S. at 302. Instead, on habeas review, the question is whether the
14 application of those rules violates a party’s “right to present a defense and
15 receive a fair trial.” Lunbery, 605 F.3d at 761 n.1; see also Moses v. Payne, 555
16 F.3d 742, 757 (9th Cir. 2009) (Supreme Court decisions “do not squarely address
17 whether a court’s exercise of discretion to exclude expert testimony violates a
18 criminal defendant’s constitutional right to present relevant evidence”; habeas
19 relief unavailable under AEDPA); Aguilar v. Cate, 585 F. App’x 450, 451 (9th
20 Cir. 2014) (same).

21 The admission or exclusion of evidence under state evidentiary rules
22 generally does not present a federal question. Estelle v. McGuire, 502 U.S. 62,
23 67-68 (1991). Moreover, even if a state court’s evidentiary decision constitutes
24 error under the federal constitution, habeas relief is not automatic. Rather, the
25 claim is reviewed under a harmless error standard. Mays v. Clark, 807 F.3d 968,
26 979-81 (9th Cir. 2015). An error cannot lead to habeas relief “unless it results in
27 ‘actual prejudice’” that had a “substantial and injurious effect or influence in
28

1 determining the jury's verdict." Brecht v. Abrahamson, 507 U.S. 619, 637
2 (1993). Habeas relief is required when "the record is so evenly balanced that a
3 conscientious judge is in grave doubt as to the harmlessness of an error." Gault
4 v. Lewis, 489 F.3d 993, 1016 (9th Cir. 2007).

5 Analysis

6 The Court denies habeas relief on this claim. On independent, deferential
7 review, the Court finds that the state court could reasonably have concluded
8 Petitioner failed to show that the trial court deprived him of a "meaningful
9 opportunity" to present his insanity defense. Crane, 476 U.S. at 690. Petitioner
10 called several witnesses, thoroughly articulated his theory of insanity, and argued
11 his case in detail. However, he failed to provide the trial court with a proffer that
12 the social worker (not a psychiatrist with experience applying the legal-insanity
13 test) could offer competent testimony on the topic of his mental state.

14 The state court could reasonably have concluded that this was not the
15 critical type of evidence necessary for his defense. Chambers, 410 U.S. at 294.
16 This is particularly true given that the state court had no non-speculative basis to
17 conclude that the social worker's testimony would be relevant to the sanity
18 finding. Moreover, to the extent that Petitioner challenges the evidentiary basis
19 for the trial court's actions, that constituted a decision based on state law that is
20 not for this Court's scrutiny. McGuire, 502 U.S. at 67-68.

21 In any event, even assuming constitutional error, the Court easily
22 concludes that any error was harmless. Two qualified, court-appointed
23 psychiatrists found Petitioner to be legally sane at the time of the offenses.
24 Petitioner proffered nothing (save his hopeful interactions with his former
25 caseworker) that demonstrated that the missing witness's testimony would have
26 credibly affected that conclusion. The Court is not left in "grave doubt" as to the
27 harmlessness of the alleged error here. Gault, 489 F.3d at 1016; Brecht, 507 U.S.

28

1 at 637.⁵ Petitioner has not shown an “extreme malfunction” in the state criminal
 2 justice system warranting habeas relief. Richter, 562 U.S. at 102.

3 **Sufficiency of Evidence (Ground Four)**

4 Petitioner contends that the trial court incorrectly concluded on the merits
 5 that he was legally sane during the crimes. (Docket # 1 at 6, 12-13; # 39 at
 6 24-27.)

7 **Relevant Federal Law**

8 Under the Due Process Clause, a criminal defendant may be convicted
 9 only by proof of every fact necessary to constitute a charged crime or
 10 enhancement. Jackson v. Virginia, 443 U.S. 307 (1979). The relevant issue
 11 under Jackson “is whether, after viewing the evidence in the light most favorable
 12 to the prosecution, any rational trier of fact could have found the essential
 13 elements of the crime beyond a reasonable doubt.” Id. at 319 (emphasis in
 14 original). On habeas review, a federal court’s consideration is limited to the
 15 determination of whether the state court analysis – which itself is deferential to a
 16 jury’s verdict – was “objectively unreasonable.” Cavazos v. Smith, 565 U.S. 1, 2
 17 (2011) (quotation omitted).

18 In applying the Jackson standard, the federal court must refer to the
 19 substantive elements of the criminal offense as defined by state law. Jackson,
 20 443 U.S. at 324 n.16. A federal court sitting in habeas review generally is
 21 “bound to accept a state court’s interpretation of state law.” Butler v. Curry, 528
 22 F.3d 624, 642 (9th Cir. 2008). Under California law, a criminal defendant is
 23 legally insane if he is “incapable either of knowing the nature and character of
 24 his act, or of understanding that it is wrong.” People v. Skinner, 39 Cal. 3d 765,

25 _____
 26 ⁵ Petitioner’s related allegation that the trial judge committed
 27 misconduct by releasing the witness is summarily denied as non-colorable.
 28 Nothing in the record indicates that the judge’s behavior “rendered the trial so
 fundamentally unfair as to violate federal due process under the United States
 Constitution.” Duckett v. Godinez, 67 F.3d 734, 740 (9th Cir. 1995).

1 782 (1985). The defendant bears the burden of establishing insanity as an
 2 affirmative defense. People v. Hernandez, 22 Cal. 4th 512, 521-22 (2000).

3 The Ninth Circuit and numerous judges in this district have concluded that
 4 there is no clearly established decision “where the Supreme Court addressed
 5 challenges to the sufficiency of the evidence regarding sanity when a defendant
 6 bears the burden of proving insanity as an affirmative defense by a
 7 preponderance of the evidence.” Hawkins v. Horal, 572 F. App’x 480 (9th Cir.
 8 2014); Gonzalez v. Harrington, No. CV 08-7073 GW (SS), 2011 WL 7429400
 9 at *6 (C.D. Cal. 2011) (“The Supreme Court has not addressed challenges to the
 10 sufficiency of the evidence where, as here, a criminal defendant bears the burden
 11 of proving the affirmative defense of insanity by a preponderance of the
 12 evidence.”); Maria v. Grounds, No. CV 13-1183 DSF (MRW), 2015 WL
 13 4608304 (C.D. Cal. 2015) (same), aff’d sub nom. Maria v. Muniz, ___ F. App’x
 14 ___, 2017 WL 3207152 at *2 (9th Cir. Jul. 28, 2017) (citing Hawkins). As a
 15 result, AEDPA precludes consideration of such a claim on habeas review.

16 Analysis

17 Petitioner is not entitled to habeas relief on this claim. As a threshold
 18 matter, the Jackson analysis does not apply to Petitioner’s assertion of the
 19 affirmative defense of legal insanity. Petitioner points to no clearly established
 20 federal law as determined by the Supreme Court that extends Jackson to the
 21 procedural context of a sanity proceeding in which the defense bears the burden
 22 of proof. Hawkins, 572 F. App’x 480; Gonzalez, 2011 WL 7429400; Maria,
 23 2015 WL 4608304. In the absence of such a “specific legal rule” from the
 24 Supreme Court, the Court cannot grant relief under AEDPA. Lopez v. Smith,
 25 ___ U.S. ___, 135 S. Ct. 1, 3 (2014) (AEDPA bars consideration of claim when
 26
 27
 28

1 “our case law does not clearly establish the legal proposition needed to grant
2 respondent habeas relief”).⁶

3 But, even if the Court could consider Petitioner’s Jackson claim, the state
4 appellate court’s decision survives doubly-deferential habeas review under
5 AEDPA. None of the three psychiatrists who testified at the sanity phase of the
6 trial concluded that Petitioner met the test for legal insanity. The only evidence
7 that supported Petitioner’s defense was his own, self-serving testimony about his
8 mental state. Viewed in the light most favorable to the prosecution, though, the
9 state court could reasonably have concluded that the evidence of Petitioner’s
10 sanity was substantial enough to warrant rejection of his defense. Jackson, 443
11 U.S. at 319; Hernandez, 22 Cal. 4th at 521-22.

12 Fairminded judges would not uniformly conclude that the state court
13 violated the Constitution here. Richter, 131 S. Ct. at 786. Habeas relief is not
14 warranted.

15 **Prosecutorial Misconduct (Ground Two)**

16 Petitioner claims that the prosecutor committed misconduct in closing
17 argument. Petitioner contends that the prosecutor improperly encouraged the
18 jury to reach a non-unanimous conclusion regarding the assault charges. (Docket
19 # 1 at 5, 11; # 39 at 17-19.)

20 **Relevant Facts**

21 Petitioner was charged with committing assault with a deadly weapon
22 (a knife) against an identified victim. The charging document did not specify
23 what particular physical action Petitioner took against the victim that constituted
24

25 ⁶ The Court declines to take up Petitioner’s unexhausted argument
26 (raised in his reply papers) that barring this claim from federal review violates
27 the Equal Protection Clause. Delgadillo v. Woodford, 527 F.3d 919, 930 n.4
28 (9th Cir. 2008) (“Arguments raised for the first time in petitioner’s reply brief are
deemed waived.”); Collins v. Uribe, 564 F. App’x 343, 344 (9th Cir. 2014)
(same).

1 the charged crime. (1CT at 51.) During closing argument, the prosecutor stated
 2 that any of three movements that Petitioner made with his knives during the
 3 incident qualified as the charged ADW. (3RT at 1221-29.)

4 After describing these three actions, the prosecutor told jurors that they
 5 could “hang your hat on any one of these motions” to find Petitioner guilty of the
 6 assault. (3RT at 1230.) The trial judge subsequently instructed the jury that the
 7 prosecution “presented evidence of more than one act to prove that the defendant
 8 committed this offense. You must not find the defendant guilty unless you all
 9 agree that the People have proved that the defendant committed at least one of
 10 these acts and you all agree on which act he committed.” (3RT at 1243, 1305
 11 (emphasis added).)

12 **Relevant Federal Law**

13 In evaluating a claim that a prosecutor engaged in misconduct, a court
 14 must determine whether the prosecutor’s comments or actions “so infected the
 15 trial with unfairness as to make the resulting conviction a denial of due process.”
 16 Darden v. Wainwright, 477 U.S. 168, 181 (1986). Considerations include
 17 whether the prosecutor’s remarks or conduct were improper; if so, the court must
 18 then consider whether the remarks or conduct affected the trial unfairly. Tak Sun
 19 Tan v. Runnels, 413 F.3d 1101, 1112 (9th Cir. 2005). Such unfairness may
 20 occur when there is an “overwhelming probability” that the prosecutorial
 21 misconduct was “devastating to the defendant” at trial. Davis v. Woodford, 384
 22 F.3d 628, 644 (9th Cir. 2004) (quoting Greer v. Miller, 483 U.S. 756, 766 n.8
 23 (1987)); Wood v. Ryan, 693 F.3d 1104, 1113 (9th Cir. 2012) (applying Brecht
 24 harmless error standard).

25 **Analysis**

26 On deferential, independent review, the Court finds that no habeas relief is
 27 warranted. The state court could reasonably have concluded that merely posing
 28

1 alternate theories of guilt to the jury was not improper argument under the
 2 Constitution. Tak Sun Tan, 413 F.3d at 1112; Davis, 384 F.3d at 644. Although
 3 the prosecutor identified several of Petitioner's acts that could serve as the basis
 4 of an assault conviction, the prosecutor did not advocate that jurors convict
 5 Petitioner in a non-unanimous manner (that is, some for one specific act of
 6 assault, others for another act). And the state court could quite reasonably have
 7 concluded that, even if there was any impropriety with the prosecutor's
 8 argument, it was easily cured by the trial judge's timely inclusion of a specific
 9 unanimity instruction – directed precisely at the alleged problem Petitioner raises
 10 on habeas review. Wood, 693 F.3d at 1113.

11 The Court has no basis to conclude that the prosecutor's comments created
 12 an “overwhelming probability” that Petitioner was wrongly convicted. Davis,
 13 384 F.3d at 644. Petitioner is not entitled to habeas relief on this claim.

14 **Ineffective Assistance of Appellate Counsel (Ground Three)**

15 On direct appeal, Petitioner's appellate attorney pursued an argument that
 16 Petitioner was improperly sentenced for his convictions. Petitioner now
 17 contends that the appellate attorney was ineffective for failing to raise other
 18 arguments (those he now raises on habeas review) on direct appeal. (Docket # 1
 19 at 6, 11-12; # 39 at 19-20.)

20 On habeas review, the state superior court denied relief by expressly
 21 applying the deficient performance / prejudice standard enunciated in Strickland
 22 v. Washington, 466 U.S. 668 (1984). The court also cited Supreme Court
 23 decisions for the principle that an appellate lawyer is not constitutionally
 24 ineffective for failing to raise every non-frivolous issue on appeal. The state
 25 court concluded that Petitioner “failed to show that appellate counsel's exercise
 26 of professional judgment was deficient or that, but for counsel's errors, the
 27 outcome of the appeal would have been different.” (Lodgment # 6 at 2.)
 28

1 * * *


2 The Court summarily denies relief on Petitioner's claim of ineffective
3 assistance by his appellate lawyer. Such a claim is reviewed under a doubly-
4 deferential standard. Richter, 562 U.S. at 105. The state court reasonably found
5 that Petitioner's habeas claims were too thin to have been meritorious on direct
6 appeal. As a result, the state court fairly concluded that Petitioner was not
7 prejudiced by any potentially deficient performance of his lawyer.

8 Based on the Court's review of Petitioner's claims in this case, it cannot
9 disagree. More importantly, on deferential AEDPA review of the state court
10 (which itself deferred to the actions of the appellate lawyer), the Court has no
11 basis to conclude that the state court decision unreasonably applied Strickland or
12 its progeny. Petitioner has not carried his burden – in this Court or on state
13 habeas review – of convincingly showing that he had any real likelihood of a
14 reversal on appeal based on these claims. Petitioner's claim of ineffective
15 assistance of appellate counsel cannot lead to habeas relief.

16 **CONCLUSION**

17 IT IS THEREFORE ORDERED that judgment be entered denying the
18 Petition and dismissing the action with prejudice.

19
20
21 Dated: October 5, 2017

22 
23 _____
24 HON. MICHAEL R. WILNER
25 UNITED STATES MAGISTRATE JUDGE
26
27
28

Lodged Doc. 8

CV 15-05183-MRW

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court

Court data last updated: 08/08/2016 08:56 AM

Docket (Register of Actions)

WILSON (LUCIOUS) ON H.C.

Case Number S232447

Date	Description	Notes
02/16/2016	Petition for writ of habeas corpus filed	Petitioner: Lucious Wilson Pro Per
05/11/2016	Petition for writ of habeas corpus denied	

[Click here](#) to request automatic e-mail notifications about this case.

Careers | Contact Us | Accessibility | Public Access to Records | Terms of Use | Privacy © 2016
Judicial Council of California

Name: LUCIOUS WILSON
 Address: CSP-LAC C-1/245
BOX 4610
LANCASTER CA 93539
 CDC or ID Number: V. 94223

Lodged Doc. 7
 CV 15-05183-MRW

SUPREME COURT
FILED

FEB 16 2016

Frank A. McGuire Clerk
 Deputy

State of California
SUPREME COURT
 (Court)

<u>LUCIOUS WILSON</u>	
Petitioner	vs.
<u>J. Soto</u>	
Respondent	

PETITION FOR WRIT OF HABEAS CORPUS

No. **S232447**
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

MC-275

This petition concerns:

- ☒ A conviction
 ☐ Parole
☐ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: Lucious Wilson
 2. Where are you incarcerated? CSP-Lancaster, CA
 3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Assault w/Deadly weapon
Exhibiting a Deadly weapon

- b. Penal or other code sections: 245(a)(1), 417.8
 c. Name and location of sentencing or committing court: Norwalk Superior Court
Los Angeles County
 d. Case number: VA121164
 e. Date convicted or committed: 3-22-12
 f. Date sentenced: 6-7-12
 g. Length of sentence: 13 yrs
 h. When do you expect to be released? 2020
 i. Were you represented by counsel in the trial court? ☐ Yes ☒ No If yes, state the attorney's name and address:

4. What was the LAST plea you entered? (Check one):

☐ Not guilty
 ☐ Guilty
 ☐ Nolo contendere
 ☒ Other: NGT

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury
 ☒ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

Bi-Furcated

MC-275

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

Prosecutorial misconduct. Fourteenth
Amendment due process violation

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner was charged with one count of assault w/ deadly weapon. with one action in one instance. Prosecutor Mr. Ramadan explained to the jury in closing that the defendant is only charged with one count of assault but if the jury found that the defendant was not guilty in the instant offense, there were "three assaults they could hang their hat on a ~~convict~~ convict the defendant". Prosecutor Ramadan also improperly vouches for the credibility of a witness saying "she has no reason to lie"

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

U.S. v. Weatherspoon, 410 F.3d 1142, 1146 (9th Cir. 2005) (prosecutor's statement that witness had no reason to lie improper). U.S. v. Cornett, 232 F.3d 570, 575 (7th Cir. 2000)

1 Hodge v. Hurley, 426 F.3d 368, 378 (6th Cir. 2005)
 2 (prosecutor's statements that witness is
 3 absolutely believable improper.) Morris v.
 4 Yist, 447 F.3d 735, 744 (9th Cir. 2006)
 5 (Failure to investigate known inconsistencies
 6 in testimony & inability to do so later supported
 7 inference that at least some of witness's
 8 testimony was false & prosecutor improperly
 9 presented it.) U.S. v. Ziaharly, 295 F.3d
 10 182, 202 (2^d Cir. 2002) (Court considered
 11 whether prosecutor's remarks improper &
 12 whether remarks infected trial with
 13 unfairness, thereby violating defendant's
 14 due process rights.) The prosecutor's
 15 misconduct had substantial & injurious
 16 effect or influence in determining
 17 jury's verdict.
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

Testimony of prosecution witness: 335
Valerie Valdez

1 OKAY?

2 A OKAY.

3 Q NOW, YOU INDICATED THAT WHEN YOU SAW THE
4 DEFENDANT THERE, HE CAME UP TO THIS AREA WHERE YOU WERE
5 AT; CORRECT?

6 A UH-HUH.

7 Q IN TERMS OF RIGHT BEHIND THE REGISTERS;
8 CORRECT?

9 A YES, ON THIS SIDE.

10 Q ON THIS SIDE?

11 A UH-HUH.

12 Q AND WERE YOU ON THE PHONE WITH ANYBODY AT
13 THAT TIME?

14 A YES. I WAS CALLING 9-1-1.

15 Q WHY SPECIFICALLY WERE YOU CALLING 9-1-1?

16 A BECAUSE HE KEPT TELLING THE CUSTOMERS
17 SOMETHING WAS GOING TO HAPPEN, YOU CANNOT BE HERE, YOU
18 GUYS NEED TO LEAVE. SO I WAS CALLING THE POLICE SO I
19 CAN GET SOME ASSISTANCE HERE BECAUSE HE WOULDN'T LEAVE.

20 Q OKAY. THANK YOU. THEN WHAT HAPPENED AS
21 YOU WERE ON THE PHONE WITH THE POLICE REPORTING THE
22 DEFENDANT'S CONDUCT AND WORDS?

23 A HE KEPT GOING. THEN I WENT OVER THERE BY
24 THE OPENING. AND I HAD, LIKE I SAID, A GUY ON THE
25 REGISTER AND I THOUGHT HE WAS GOING TO ROB US SO I
26 SLAMMED THE REGISTER. AS I WAS STANDING THERE STILL
27 TALKING TO 9-1-1. AND THEN HE KIND OF LIKE SHOVED ME TO
28 GET THROUGH.

INCONSISTENT - 7/14 cut lie.

1 Q OKAY. I'M GOING TO ASK YOU TO TAKE A
2 MOMENT TO VIEW ONE MORE SMALL CLIP WITH US, BEGINNING
3 AT, FOR THE RECORD, 11:24:15. OKAY, MS. VALDEZ, DO ME A
4 FAVOR AND KEEP AN EYE ON THE BUN CART IN THE LEFT-HAND
5 CORNER, BOTTOM LEFT-HAND CORNER. CAN YOU SEE IT MOVING
6 THERE?

7 A YES.

8 Q WAS THAT YOU MOVING THAT?

9 A YES.

10 Q WAS THAT YOU USING THE SHIELD, USING IT AS
11 IT AS A SHIELD AS YOU JUST TESTIFIED?

12 A YES.

13 Q FOR THE RECORD, CLIP THERE ENDED 11:24:28.
14 WHY DID YOU FEEL THE NEED TO USE THE BUN CART AS A
15 SHIELD?

16 A BECAUSE I WAS SCARED.

17 Q SCARED OF WHAT?

18 A SCARED THAT HE WAS GOING TO COME, COME
19 AFTER ME AND EVELIA.

20 Q NOW, WHAT HAPPENED, IF YOU RECALL, AFTER
21 THIS TIME WHERE YOU KIND OF PULLED THE CART IN FRONT OF
22 YOU TO TRY TO BLOCK THE DEFENDANT AWAY FROM YOU AND
23 MS. CASTANON? WHAT HAPPENED AT THAT POINT?

24 A HE JUST KEPT -- HE KEPT COMING BACK AND
25 CUTTING HIMSELF AND THROWING HIS BLOOD ALL OVER
26 MCDONALD'S, TELLING ME IT WAS TAINTED.

27 Q WAS HE SAYING SOMETHING IN PARTICULAR WAS
28 TAINTED?

1 A NO. HE JUST SAID EVERYTHING IS TAINTED
2 BECAUSE HE THREW HIS BLOOD EVERYWHERE FROM THE GRILL TO
3 THE FRONT COUNTER TO THE FRY STATION TO WHERE THEY MAKE
4 THE FOOD, ON THE FLOOR. HE KEPT SELF-INFLICTING WOUNDS
5 ~~INCONSISTENT - LIE~~ ON HIM. HE'D CUT HIS NECK, HIS ARMS, HE STABBED HIM IN
6 THE STOMACH.

7 Q I'M GOING TO SHOW YOU, I HAVE TWO
8 PHOTOGRAPHS.

9 YOUR HONOR, I REQUEST TO MARK THEM AS PEOPLE'S 4
10 AND 5 FOR IDENTIFICATION?

11 THE COURT: YES.

12 (PEOPLE'S EXHIBIT 4, MARKED FOR
13 IDENTIFICATION, PHOTOGRAPH OF BLOOD
14 ON COUNTER)

15 (PEOPLE'S EXHIBIT 5, MARKED FOR
16 IDENTIFICATION, PHOTOGRAPH OF BLOOD
17 BY REGISTER)

18 Q THANK YOU. FOR THE RECORD, SHOWING THE
19 DEFENDANT. OKAY.

20 MS. VALDEZ, SHOWING YOU WHAT'S BEEN MARKED AS
21 PEOPLE'S 4 AND 5 FOR IDENTIFICATION, BEGINNING WITH
22 PEOPLE'S 4 HERE, DO YOU SEE WHAT'S DEPICTED THERE?

23 A YEAH, THAT'S HIS BLOOD, THE CUPS AND HAPPY
24 MEAL TOYS, HIS HAT AND A TRAY.

25 Q AND DOES THAT SEEM TO FAIRLY AND ACCURATELY
26 DEPICT HIS BLOOD ALL OVER THE COUNTER?

27 A YES, THAT'S HIS BLOOD.

28 Q SHOWING YOU AGAIN PICTURE NO. 5, DOES IT

1 THAT NOW.

2 THE COURT: HE CAN ALWAYS MARK THEM.

3 MR. RAMADAN: OKAY. WELL, I'M GOING TO OBJECT TO
4 THEIR INTRODUCTION AND SHOWING TO THE WITNESS.

5 THE COURT: NO. YOUR OBJECTION'S GOING TO BE
6 OVERRULED. HE CAN SHOW THEM TO THE WITNESS AND WE'LL
7 DISCUSS AS TO WHETHER OR NOT THEY'RE GOING TO COME INTO
8 EVIDENCE.

9 THE CLERK: YOUR HONOR, HE'S CALLING THEM DEFENSE
10 ONE AND TWO.

11 THE COURT: WHAT DO YOU HAVE THERE, MR. WILSON?

12 MR. WILSON: PICTURES OF THE ACTUAL INJURIES
13 SUSTAINED BECAUSE I SEEK TO IMPEACH THE TESTIMONY SHE
14 SAID THE DEFENDANT CUT HIS NECK AND CUT HIS STOMACH. I
15 HAVE PICTURES AND HOSPITAL RECORDS.

16 MR. RAMADAN: I'M GOING TO OBJECT. SHE NEVER
17 TESTIFIED TO THAT. SEE PG. 347

18 MR. WILSON: SHE SURE DID.

19 THE COURT: OKAY. SO YOU KNOW, LADIES AND
20 GENTLEMEN, I'M SORRY. YOU'RE GOING TO HAVE TO STEP INTO
21 THE JURY ROOM REAL QUICK.

22
23 (THE FOLLOWING PROCEEDINGS WERE HELD
24 IN OPEN COURT OUT OF THE PRESENCE OF THE
25 JURORS:)

26
27 THE COURT: OKAY. SO MR. RAMADAN, I CAN'T REALLY
28 SEE WHAT HE'S TRYING TO INTRODUCE. WHAT HAS HE GOT

1 THERE?

2 MR. RAMADAN: FOR THE RECORD, HE HAS ONE PICTURE
3 MARKED DEFENSE 1. THAT'S A PICTURE OF HIS FACE ALL
4 BLOODY BECAUSE HE GOT SHOT IN THE FACE WITH BY A BEAN
5 BAG GUN. NO RELEVANCE TO THIS.

6 NUMBER 2, AN IMAGE OF IT LOOKS LIKE ANOTHER IMAGE
7 OF AN INJURY. I'M NOT SURE WHAT IT'S FROM. MUST BE
8 FROM THE BEAN BAG GUN BECAUSE IT DOESN'T LOOK LIKE A
9 KNIFE SLIT OR ANYTHING LIKE THAT.

10 THEN HE HAS A PICTURE OF WHAT DOES APPEAR TO BE A
11 CUT ON HIS ARM. THAT LOOKS STITCHED UP.

12 SO THAT'S WHY I SAID AT LEAST TO TWO OF THOSE I
13 WOULD OBJECT BECAUSE LACK OF FOUNDATION.

14 THE COURT: MR. WILSON, DO YOU THINK THAT THIS
15 WITNESS CAN LAY A FOUNDATION FOR THE ADMISSIBILITY OF
16 THOSE PHOTOGRAPHS?

17 MR. WILSON: WELL, IF WE CAN GET READ BACK FROM
18 STENOGRAPHER. HE JUST ASKED HER ABOUT INJURIES IF SHE
19 SAID RIGHT NOW THAT THE DEFENDANT CUT HIS ARM, CUT
20 HIMSELF IN THE STOMACH AND CUT HIS NECK. I HAVE THESE
21 PICTURES AND I HAVE HOSPITAL RECORDS THAT SHOW THAT THAT
22 IS ONE OF MANY UNTRUTHS, INCONSISTENCIES TO HER
23 TESTIMONY.

24 THE COURT: I DON'T SEE THAT AS INCONSISTENT.

25 MR. WILSON: ^{HOW NOT} IT WAS NOT TRUE. BUT I CERTAINLY
26 DIDN'T STAB MYSELF IN THE STOMACH OR NECK. I HAVE
27 HOSPITAL RECORDS.

28 THE COURT: AT THIS POINT WHAT I'M GOING TO DO IS

1 THIS. I'M GOING TO SUSTAIN THE PROSECUTION'S OBJECTION.
2 THERE'S AN IMPROPER FOUNDATION. AT THIS POINT ANY
3 INTRODUCTION OF THOSE PHOTOGRAPHS IS PREMATURE. I'M NOT
4 SAYING YOU CAN'T USE THEM. I'M SAYING AT THIS POINT
5 WITH THIS WITNESS YOU DO NOT HAVE A PROPER BASIS TO
6 INTRODUCE THEM.

7 OKAY. LET'S GO AHEAD AND BUZZ THEM OUT.

8 MR. RAMADAN: WHAT ABOUT THE HOSPITAL RECORDS?

9 THE COURT: THAT'S THE SAME THING, OKAY. IT'S THE
10 SAME THING. ALL RIGHT. THIS WITNESS BY HER STATEMENT
11 ALLUDING TO WHAT INJURIES SHE THINKS YOU INFLICTED ARE
12 NOT A GROUNDS FOR INTRODUCING THOSE PHOTOGRAPHS OR
13 INTRODUCING THE HOSPITAL RECORDS. I'M NOT SAYING YOU
14 CAN'T USE THEM AT SOME POINT. NOT NOW, OKAY.

15 LET'S BUZZ THEM OUT.

16 (DEFENDANT'S EXHIBIT A,B,C, MARKED
17 FOR IDENTIFICATION, PHOTOS OF
18 DEFENDANT)

19
20 (THE FOLLOWING PROCEEDINGS WERE HELD IN
21 OPEN COURT IN THE PRESENCE OF THE JURORS)

22
23 THE COURT: WELCOME BACK. ONCE AGAIN, ALL 12
24 JURORS ARE PRESENT AS WELL AS TWO ALTERNATES.

25 MR. WILSON.

26 (PAUSE IN THE PROCEEDINGS.)

27 THE COURT: YOU HAVE A QUESTION, MR. WILSON?

28 MR. RAMADAN: HE'S REQUESTING THAT I PULL UP A

1 WHEN WE FIRST STARTED THE VIDEO, THAT WAS THE BEGINNING;
2 CORRECT?

3 A WHEN YOU VERY FIRST STARTED THE VIDEO?

4 Q RIGHT.

5 A THIS IS FARTHER INTO THE VIDEO.

6 Q CORRECT, RIGHT. BUT THAT WAS THE
7 BEGINNING; RIGHT?

8 A I BELIEVE SO.

9 Q YOU TESTIFIED WHEN, I BELIEVE IT WAS ON
10 DIRECT, WHEN THE DEFENDANT CAME OVER THERE YOU THOUGHT
11 HE WAS GOING TO ROB THE PLACE AND YOU CLOSED THE
12 REGISTER? *YES, I ONLY GOT CW ATTEMPTED ROBBERY*
THAT NEVER HAPPENED.

13 A YES.

14 Q I DON'T. WHERE DID THAT HAPPEN AT? I
15 DON'T SEE IT.

16 A IT WOULD BE WHEN THEY -- WHEN YOU FIRST
17 WALKED IN TO THE COUNTER WITH MY HAND.

18 Q OKAY. LET ME BACK THE VIDEO UP.

19 A HE'S OPENING. HE'S TAKING THE MONEY. HE
20 HASN'T TOOKEN THE MONEY YET.

21 (VIDEO PLAYED)

22 Q I MISSED IT. STILL DIDN'T SEE IT.

23 A I GUESS I WAS WRONG. I WAS WRONG.

24 Q I MISSED IT. I STILL DIDN'T SEE IT.

25 A I GUESS I WAS WRONG. I WAS WRONG.

26 Q OKAY. HOW DID YOU -- I DON'T UNDERSTAND

27 HOW YOU COULD BE WRONG ABOUT THE REGISTER BEING OPENED,
NEVER SLAMMED AN OPEN REGISTER - INCIDENT 4 - PG. 335
28 FEELING THAT THE DEFENDANT WAS GOING TO ROB THE PLACE?

1 A WELL, WHEN EDWARD GRABBED THE DEFENDANT AND
2 TURNED HIM AROUND, IT WAS ON HIS BACK. WHEN WE TOLD
3 EDWARD TO LET HIM GO, EDWARD BACKED UP, AND THAT'S WHERE
4 EDWARD ENDED UP AT.

5 Q WE DON'T SEE THAT RIGHT HERE?

6 A UM, SORRY, BUT THAT'S WHAT I SEEN.

7 Q COULD YOU BE MISTAKEN?

8 A NO.

9 Q BUT YOU WERE MISTAKEN ABOUT THE CASH
10 REGISTER?

11 A YES, I WAS. THAT'S NOT A MISTAKE.

12 Q OKAY.

13 A BECAUSE I WOULD NOT HAVE TOLD EDWARD TO LET
14 YOU GO TO LET THE DEFENDANT GO, IF HE DIDN'T HAVE A
15 KNIFE.

16 Q OH, WELL, WE CERTAINLY SEE THE DEFENDANT
17 DID HAVE THE KNIVES BUT WE DON'T SEE THEM HAVING THEM AT
18 HIS BACK BECAUSE THAT'S PRETTY THREATENING TO HAVE A
19 KNIFE AT SOMEONE'S BACK; RIGHT?

20 CAN WE PLAY A LITTLE MORE, PLEASE.

21 (VIDEO PLAYED)

22 Q STOP RIGHT THERE FOR A SECOND.

23 AT THIS POINT WE SEE THE DEFENDANT DOES HAVE THE
24 KNIVES AND HE'S HOLDING THEM LIKE THIS WITH THE BLADE
25 GOING UP ALONG HIS, I GUESS, FOREARM. IS THAT AN
26 ACCURATE DEPICTION OF THE IMAGE?

27 A FROM THE POINT OF VIEW, I GUESS SO, YES.

28 Q CAN WE CONTINUE ON FOR A SECOND, PLEASE.

1 THAT'S WHERE YOU WANT TO GO TO; CORRECT?

2 MR. WILSON: CORRECT.

3 MR. RAMADAN: ONE MINUTE IN.

4 MR. WILSON: CAN WE STOP IT RIGHT THERE.

5 Q WHERE EVERYBODY WAS DOWN AT THE BOTTOM OF
6 THE SCREEN, WHAT AREA OF THE RESTAURANT IS THAT?

7 A THAT'S THE GRILL AREA IN THE BACK WHERE THE
8 BACK SINK IS IN THE BACK DOOR, THE SIDE DOOR.

9 Q THAT'S THE AREA WHERE YOU SAY MS. CASTANON
10 WAS, IN YOUR WORDS, HIDING?

11 A ON THAT RIGHT SIDE THERE'S A DOOR. ON THE
12 LEFT SIDE IS WHERE THE SINK AND THE OFFICE IS.

13 Q OKAY. BUT WHAT I'M ASKING IS YOU SAY THAT
14 THAT BACK IS WHERE SHE WAS HIDING; CORRECT?

15 A THAT'S WHERE I SAID SHE WAS AT, YES.

16 Q CAN WE BACK IT UP JUST A LITTLE BIT. YOU
17 ALSO TESTIFIED IF I'M NOT MISTAKEN THAT YOU SAID SHE
18 NEVER CAME FROM OUT THAT AREA, SHE WAS BACK THERE THE
19 ENTIRE TIME? *INCONSISTANT - perjury*

20 A I DID SAY THAT.

21 Q YOU DID SAY THAT. CAN WE --

22 MR. RAMADAN: YOU WANT ME TO BACK IT UP, YOU SAID?

23 MR. WILSON: JUST A LITTLE BIT.

24 MR. RAMADAN: ALL RIGHT. HERE YOU GO.

25 Q BY MR. WILSON: OKAY. THAT'S HER COMING
26 OUT OF THERE ONCE. WAS THAT MS. CASTANON WHO JUST CAME
27 FROM OUT OF THERE?

28 A YES.

1 A HE DIDN'T GET REAL CLOSE.

2 Q ~~IS THAT A YES OR A NO?~~

3 A NO.

4 Q OKAY. CAN WE PLAY A LITTLE MORE REAL
5 QUICK. NOW YOU SEE HIM WALKING AWAY?

6 (VIDEO PLAYED)

7 A YES.

8 Q OKAY. IS THAT YOU?

9 A YES.

10 Q ~~NOW, IS THAT EVELIA COMING OUT AGAIN?~~

11 A YES.

12 Q YOU SAID SHE NEVER CAME OUT BUT NOW WE SEE
13 HER COMING OUT AT LEAST TWICE? *SEE PG. 362*

14 A YES.

15 THE COURT: I'M SORRY, MR. WILSON. I'M GOING TO
16 STOP YOU REAL QUICK RIGHT NOW.

17 WE'RE GOING TO TAKE A BRIEF AFTERNOON RECESS SO
18 THE REPORTER CAN TAKE A BREAK. WHAT I'M GOING TO DO IS
19 IF YOU'D LIKE TO STEP INTO THE JURY ROOM, YOU CAN AND
20 REMAIN IN THERE UNTIL WE SUMMONS YOU BACK OUT AGAIN. OR
21 IF YOU'D LIKE YOU CAN GO OUTSIDE TO THE HALLWAY OR GET A
22 BREATH OF FRESH AIR.

23 WE'LL TAKE ABOUT A 10 TO 15 MINUTE BREAK. WHEN
24 ALL OF YOU ARE EITHER OUT THERE OR HERE, WHEN WE GET
25 EVERYBODY TOGETHER, WE'LL GO BACK INTO SESSION. SHOULD
26 PROBABLY ABOUT 10 TO 15 MINUTES. ALL RIGHT.

27 (A RECESS WAS TAKEN)

28 THE COURT: GO AHEAD AND BUZZ THEM OUT.

1 COMING IN, WOULD JUST BE A LITTLE LATE?

2 A NO.

3 Q NO, YOU DIDN'T SAY THAT?

4 A I DON'T REMEMBER. WHEN EVELIA CALLED TO
5 TELL ME SHE WASN'T COMING IN, I TOLD HER TO GO AHEAD AND
6 COME IN, YOU WOULD BE SAFE HERE BECAUSE SHE SAID HER
7 BOYFRIEND WAS FOLLOWING HER.

8 Q I UNDERSTAND THAT'S WHAT YOU'RE SAYING.
9 ~~WHAT I'M TRYING TO ASK IS DID SHE CALL TO SAY SHE WASN'T~~
10 ~~COMING IN OR DID SHE CALL TO SAY SHE WOULD BE LATE?~~

11 A ~~SHE CALLED TO TELL ME SHE WASN'T COMING IN.~~
12 I ASKED HER WHY AND SHE TOLD ME WHY.

13 Q ~~SO YOU NEVER TESTIFIED THAT SHE TOLD YOU~~
14 ~~THAT SHE WAS COMING BUT JUST WOULD BE LATE?~~

15 A WHAT SHE TOLD ME IS WHEN SHE CALLED ME SHE
16 SAID I WASN'T GOING TO COME INTO WORK AND I SAID WHY.
17 SHE SAID BECAUSE HER BOYFRIEND WAS FOLLOWING HER. AND I
18 TOLD HER TO COME IN TO WORK AND SHE WOULD BE SAFE HERE.
19 THEN THE PHONE WENT CLICK.

20 Q OKAY. AT WHICH POINT DID THE DEFENDANT --
21 NO, OKAY.

22 DID THE DEFENDANT EVER POINT THE KNIVES TOWARD
23 YOU?

24 A HE KEPT COMING TOWARDS WITH THE KNIVES,
25 KEPT COMING BACK AND FORTH TOWARDS THE KNIVES. I CAN'T
26 SAY SPECIFICALLY POINTING THEM DIRECTLY AT ME BUT
27 POINTING THEM ALL OVER THE PLACE.

28 Q WHAT DO YOU MEAN ALL OVER THE PLACE?

1 A WELL, MOVING THEM AROUND IS WHAT I
2 REMEMBER.

3 Q YOU WERE ASKED -- I DON'T KNOW -- ALL THESE
4 PAPERS. HERE WE GO, THIS IS WHAT I WAS LOOKING FOR. ON
5 THIS ONE IT SAYS THAT -- I DON'T KNOW HOW DO THIS.
6 I'M ON PAGE TWO OF FIVE IN THE ADDITIONAL
7 INFORMATION, I GUESS. THIS WAS WHEN YOU WERE SPEAKING
8 WITH, I BELIEVE, DEPUTY ROJAS. YOU SAID THAT EVELIA DID
9 CALL YOU, EVELIA DID CALL YOU AND WAS DUE TO START
10 AROUND 11:00 AND SAID SHE WOULD BE A FEW MINUTES LATE TO
11 WORK BECAUSE AN ARGUMENT BETWEEN HER AND THE SUSPECT. *SEE pg. 366*
12 THAT WAS YOUR ORIGINAL TESTIMONY? *INCONSISTENT*

13 A SHE COULD HAVE TOLD ME THAT. I DON'T
14 REMEMBER.

15 THE COURT: JUROR NUMBER 20?

16 JUROR NO. 20: SOMETIMES HE DOESN'T SPEAK LOUD
17 ENOUGH.

18 MR. WILSON: I'M SORRY?

19 JUROR NO. 20: I DON'T KNOW IF I SHOULD SAY THAT
20 OR NOT.

21 THE COURT: NO, YOU'RE RIGHT. THANK YOU VERY
22 MUCH.

23 MR. WILSON, MAKE SURE YOU KEEP YOUR VOICE LOUD
24 ENOUGH.

25 Q BY MR. WILSON: WELL, THE QUESTION IS, IF
26 YOU ARE UNSURE OF SOMETHING, WHY WOULD YOU TESTIFY TO
27 THAT?

28 MR. RAMADAN: YOUR HONOR, I'M JUST GOING TO

1 WHERE YOU WERE AT THE SPECIFIC TIME YOU WERE SELF-
2 INFLECTING WOUNDS.

3 THE COURT: FOR THE RECORD, SHE DRAGGED HER INDEX
4 FINGERS ACROSS HER NECK FROM BENEATH EITHER EAR, AND SHE
5 STROKED HER INDEX FINGER ACROSS HER FOREARM, AND THEN
6 SHE POINTED INTO HER ABDOMEN.

7 OKAY, MR. WILSON, UNLESS THERE'S ANYTHING ELSE.

8 Q BY MR. WILSON: ~~AT SOME POINT, THOUGH, YOU~~
9 ~~DID SEE A CUT ON THE DEFENDANT'S NECK?~~

10 A ~~I'M NOT GOING TO SAY I SEEN THE CUT.~~ I
11 SEEN THE KNIVES THERE AND A LITTLE BIT OF BLOOD COMING.
12 I'M NOT GOING TO SAY IT WAS A GIGANTIC CUT. IT WASN'T A
13 CUT THAT NEEDED STITCHES. IT COULD HAVE BEEN A PAPER
14 CUT.

15 Q BUT I STILL HAVEN'T HEARD THE ANSWER. ~~BUT~~
16 ~~AT SOME POINT YOU SAY YOU DID SEE A CUT?~~

17 A YES. WHAT!

18 Q OKAY. AND AT SOME POINT YOU SAW A CUT?

19 A I DIDN'T SEE THE CUTS, NO. THE CUTS ON THE
20 WHAT! BACK. ON THE STOMACH, NO. I JUST SEEN THE KNIVES
21 POINTED THERE.

22 Q HOW COULD YOU BE SURE THAT THE DEFENDANT
23 CUT HIS STOMACH?

24 A I CAN'T. ALL I SEEN IS THE KNIVES GOING
25 POINTED TOWARDS HIS STOMACH.

26 Q YOU TESTIFIED THE DEFENDANT HAD CUT HIS
27 NECK AND HIS STOMACH?

28 A WHEN YOU'RE STABBING THE KNIVES INTO YOUR

1 AS THE DEFENDANT PUSHED THROUGH MS. VALDEZ,
2 VICTIM EDDIE ROMERO GRABBED THE DEFENDANT FROM BEHIND
3 USING BOTH OF HIS ARMS, REACHING AROUND THE DEFENDANT'S
4 WAIST AREA TO PREVENT HIM GETTING TO THE BACK OF THE AREA
5 WHERE MS. CASTANON WAS AT. AT THAT TIME MS. VALDEZ SAW
6 THE DEFENDANT PRODUCE A KNIFE AND SWIPE IT IN A DOWNWARD
7 MOTION TOWARDS EDDIE ROMERO'S BACK. I'VE CHARACTERIZED
8 PROSECUTORIAL MISCONDUCT
THIS MYSELF AS ASSAULT NUMBER 1.

9 NOW, IN THIS CASE THE DEFENDANT WAS ONLY
10 CHARGED WITH ONE COUNT OF ASSAULT WITH A DEADLY WEAPON.
11 WHY HE WASN'T CHARGED WITH MULTIPLE CHARGES IN THIS CASE?
12 I DON'T KNOW BECAUSE I DIDN'T FILE THIS CASE. I JUST TRY
13 CASES.

14 BUT THIS IS THE EVIDENCE THAT WE HAVE AND AS
15 WE HEARD FROM MS. VALDEZ THROUGH HER OWN TESTIMONY THAT
16 SHE SAW THE DEFENDANT AS SOON AS THIS SCUFFLE IS OCCURRING
17 TAKE THE KNIFE, GRAB IT, DO A DOWNWARD-SWIPING MOTION WITH
18 EDWARD ROMERO RIGHT ON HIM TOWARDS HIS BACK AREA. THAT IS
19 A TEXTBOOK, PLAIN AS DAY, BLACK-AND-WHITE ASSAULT WITH A
20 DEADLY WEAPON.

21 NOW, THIS IS NOT CAUGHT ON VIDEO, AS YOU CAN
22 SEE, BECAUSE THERE'S NO CAMERA ANGLE THAT ACTUALLY
23 CAPTURES IT. IF YOU CAN SEE FROM THE FRONT COUNTER VIDEO,
24 THEY GO OFF TO THE SIDE WHERE THAT SCUFFLE OCCURS, AND WE
25 DON'T ACTUALLY SEE THE DEFENDANT DRAW THE KNIFE.

26 IT'S DURING THIS SPECIFIC POINT IN TIME THAT
27 MS. VALDEZ SEES THE DEFENDANT DO THE SWIPING MOTION.
28 UNFORTUNATELY, IT'S JUST NOT CAUGHT ON CAMERA BECAUSE IT'S

1222

1 OFF TO THE SIDE. AND THEN ON THE GRILL FOLDER, WHICH YOU
2 HAVE AS WELL, IT DOESN'T CATCH THAT SPECIFIC PORTION OF
3 AGAIN THAT KIND OF WALKWAY LEADING TO THE BACK.
4 UNFORTUNATELY IT'S NOT CAUGHT ON VIDEO AND WE THEREFORE --
5 WE HAVE TO RELY UPON THE TESTIMONY OF MS. VALDEZ.

6 NOW, SHE WAS ADAMANT THAT SHE OBSERVED THAT
7 HERSELF, NUMBER ONE, ~~AND SHE HAS NO REASON TO LIE~~
8 WHATSOEVER. SHE'S COMING IN, TELLING YOU WHAT SHE
9 OBSERVED. SHE NEVER KNEW THE DEFENDANT BEFORE THIS DAY.
10 SHE HASN'T HAD ANY CONTACT WITH HIM SINCE THEN, AND SHE
11 ~~HAS NO REASON TO LIE.~~ *SHE already lied*
PROSECUTOR vouching for Credability improper

12 AND AT THIS POINT LET ME CALL YOUR ATTENTION
13 TO JURY INSTRUCTION NUMBER 301. IT'S SINGLE WITNESS
14 TESTIMONY. THE TESTIMONY OF ONLY ONE WITNESS CAN PROVE
15 ANY FACT IF YOU BELIEVE THAT WITNESS'S TESTIMONY.

16 REALLY THIS IS A CREDIBILITY DETERMINATION FOR
17 YOU, THE JURORS, TO MAKE. IF YOU BELIEVE HER, THE
18 DEFENDANT COMMITTED ASSAULT; IF YOU DON'T BELIEVE HER, YOU
19 DON'T BELIEVE HER. THAT'S OKAY TOO. YOU ARE THE SOLE
20 ARBITERS OF CREDIBILITY. IT'S UP TO YOU TO DETERMINE
21 WHETHER THAT PERSON YOU SAW TESTIFY IS TELLING YOU THE
22 TRUTH OR WHETHER SHE WASN'T. IT'S UP TO YOU TO DECIDE.

23 AT THAT POINT WHEN SHE SAW THE DEFENDANT DO
24 THIS, SHE YELLED OUT, HE HAS A KNIFE, TO WARN EDDIE ROMERO
25 AND OTHER COWORKERS. AND UPON HEARING THAT THE DEFENDANT
26 HAD A KNIFE, VICTIM ROMERO IMMEDIATELY LET GO OF THE
27 DEFENDANT AND BACKED AWAY FROM HIM, AND AT THAT TIME THE
28 DEFENDANT FACED THE VICTIM, HELD THE KNIFE IN HIS RIGHT

1224

1 DRAWN. AND THIS IS AT 11:22 AND 37 SECONDS.

2 IF YOU LOOK AT IT THERE AT THAT POINT, THE
3 DEFENDANT HAS THE KNIFE IN HIS RIGHT HAND, AND HE'S
4 ALREADY HAD IT DRAWN. THAT WAS SEEN BY MS. VALDEZ AND WAS
5 VERY A SPECIFIC SPLIT SECOND OF TIME OR SECONDS THEY WERE
6 OFF THE CAMERA ANGLE.

7 THIS IS WHAT I'M CHARACTERIZING AS ASSAULT
8 NUMBER 2. misconduct WHAT WE'RE ABOUT TO SEE RIGHT NOW I'M
9 CHARACTERIZING IT AS ASSAULT NUMBER 2. AS YOU'LL SEE
10 AGAIN, WE'RE STARTING AT THE SAME POINT IN TIME. WE LEFT
11 OFF ON THE OTHER CLIP, 11:22 AND 37 SECONDS. THE
12 DEFENDANT HAS THE KNIFE POSITIONED IN HIS RIGHT HAND LIKE
13 SUCH. AS WE'LL SEE, THE DEFENDANT WILL TAKE A STEP
14 FORWARD TOWARDS VICTIM ROMERO, AND HE DOES A
15 DOWNWARD-SWIPE MOTION WITH HIS RIGHT HAND, AND WE'LL WATCH
16 THIS A FEW TIMES.

17

18 (VIDEO PLAYED AT THIS TIME.)

19

20 MR. RAMADAN: TAKE A LOOK AT THAT AND ALSO LOOK AT
21 EDDIE ROMERO. WATCH HIS REACTION TO THAT. HERE WE GO.
22 THE DEFENDANT IS GOING TO STEP UP, DOWNWARD SWIPE,
23 DEFENDANT STEPS UP, DOWNWARD TO SWIPE.

24 I'M GOING TO DO IT AGAIN. THIS TIME LOOK,
25 WATCH VICTIM EDDIE ROMERO. HE'LL TAKE A LITTLE HOP BACK.
26 YOU SEE THAT? YOU KNOW WHY HE DID THAT? BECAUSE A GUY IS
27 COMING AT HIM WITHIN 3 FEET OR SO CARRYING A KNIFE AND
28 DOING THIS.

1227

1 THEY'RE SEEING SOMETHING IN REAL LIFE. WE'RE LOSING SPLIT
 2 SECONDS IN TIME. EVERY TIME THAT THAT THING MISSES A
 3 FRAME, THIS MOTION HERE -- WATCH THE MOTION. IT'S LIKE
 4 ONE MOMENT HE'S RIGHT HERE, BUT THEN AT THE NEXT MOMENT
 5 HE'S HERE. WE MISSED THE SWIPE BECAUSE WE LOST THE SPLIT
 6 SECONDS IN TIME.

7 KEEP IN MIND HOW FAST AN ASSAULT CAN HAPPEN.
 8 BOOM, JUST LIKE THAT. THAT'S VERY IMPORTANT. WE LOSE
 9 THOSE SPLIT SECONDS IN TIME. LET'S WATCH IT AGAIN.

10

11 (VIDEO PLAYED AT THIS TIME.)

12

13 MR. RAMADAN: THE DEFENDANT IS GOING TO COME DOWN,
 14 BOOM. JUST A DOWNWARD SWIPING MOTION, AND EDWARD ROMERO
 15 HAS TO BACK OUT OF THE WAY. THAT'S ASSAULT NUMBER 2 IN
 16 THIS CASE. *prosecutor misconduct*

17 SO NOW WATCH THE REST OF THIS CLIP. THE
 18 DEFENDANT NOW PULLS OUT THE SECOND KNIFE, STARTS SAYING
 19 THINGS TO THE PEOPLE OVER COUNTER. ONE OF THE MC DONALD'S
 20 EMPLOYEES IS SO SCARED SHE HOPS OVER RIGHT AWAY, OBVIOUSLY
 21 UNDERSTANDABLY.

22 SO NOW THE DEFENDANT IS GOING TO APPROACH THE
 23 VICTIM. DID YOU SEE HIS ARMS RIGHT THERE? DID YOU SEE
 24 HOW HE DOES THAT? HE'S HOLDING TWO KNIVES IN HIS ARMS AND
 25 GOES LIKE THAT AT THE GUY WITHIN 2 FEET OF HIM. THAT IS
 26 ANOTHER ASSAULT RIGHT THERE, LADIES AND GENTLEMEN, BECAUSE
 27 THAT IS A THREAT TO DO PHYSICAL BODILY HARM WITH THOSE
 28 KNIVES UPON THE PERSON. *only charged with one assault. misconduct*

1 HE COMES WITHIN 2 TO 3 FEET OF HIM. AGAIN THIS WAS
2 ~~ASSAULT #3 - what. misconduct~~
3 ~~ASSAULT NUMBER 3, AS I CHARACTERIZED IT EARLIER.~~

4 NOT ONLY DO WE SEE HIM DO THIS KIND OF THIS
5 LUNGE AT THE VICTIM, HE SAYS TO THE VICTIM AT THAT TIME,
6 DO YOU FEEL BRAVE? DO YOU FEEL HARD? THAT RIGHT THERE IS
7 A -- IT'S A VERBAL -- I'M NOT GONNA CALL IT A THREAT.
8 IT'S A WAY OF INSTILLING FEAR IN THE VICTIM. YOU THINK
9 YOU'RE A TOUGH GUY? YOU DON'T WANT TO MESS WITH THIS.

10 WHEN I ASKED EDWARD ROMERO HOW DID HE CONSTRUE
11 THOSE QUESTIONS, HE SAID IT'S LIKE HE WAS ASKING ME IF I
12 WAS A TOUGH GUY, AND THE REASON THE DEFENDANT DID THAT IS
13 BECAUSE EDWARD ROMERO, MUCH TO HIS CREDIT, HAD THE BRAVERY
14 TO TRY TO STEP IN AND STOP THIS GUY FROM COMMITTING A
15 TRESPASS AND POSSIBLY HURTING ONE OF HIS COWORKERS.

16 EDWARD ROMERO IS TRYING TO PROTECT HIS
17 COWORKERS, AND IT'S THE DEFENDANT WHO'S UPSET THAT
18 SOMEBODY'S STOPPING HIM FROM DOING WHAT HE WANTS TO DO.
19 HE GOES UP TO THIS GUY, TELLS HIM, DO YOU FEEL BRAVE AND
20 DO YOU FEEL HARD. HE DOES ONE OF THESE. THAT IS ANOTHER
21 ~~ASSAULT.~~ AND HE'S CARRYING TWO BIG, BUTCHER KNIVES IN HIS
22 HANDS. THAT'S SCARY STUFF. THAT IS NOT INSIGNIFICANT,
23 NOT TRIVIAL.

24 THE DEFENDANT WANTS YOU TO ACT LIKE THIS IS NO
25 BIG DEAL. THAT IS A BIG DEAL IF SOMEBODY COMES IN 2 TO 3
26 FEET OF YOU AND DOES THIS. EDWARD ROMERO WAS SCARED AS
27 HELL AND UNDERSTANDABLY SO. AND THAT, LADIES AND
28 GENTLEMEN, IS ASSAULT NUMBER 3.

NOW, THE REASON I BREAK IT UP LIKE THIS IS

1230

1 ~~BECAUSE THE DEFENDANT'S ONLY CHARGED WITH ONE COUNT. MY~~
~~SUPER MISCONDUCT.~~
2 ~~POINT IS YOU CAN ACTUALLY HANG YOUR HAT ON ANY ONE OF~~
3 ~~THESE MOTIONS. THE ONE WHERE HE SWIPED DOWN AT THE~~
4 ~~DEFENDANT'S BACK -- I'M SORRY, AT THE VICTIM'S BACK WHEN~~
5 ~~IT'S OFF CAMERA; THE SECOND ONE WHAT WE SAW THROUGH THE~~
6 ~~DEFENDANT WHEN HE DOES ONE OF THESE; AND THEN THE THIRD~~
7 ~~ONE IS HERE WHERE HE COMES AT THE GUY LIKE THIS WITH TWO~~
~~3 opportunities to conviction on charge. improper~~
8 ~~KNIVES. YOU CAN HANG YOUR HAT ON ANY ONE OF THOSE AND~~
~~conduct. substantiated injurious~~
9 ~~HE'D BE GUILTY OF ASSAULT WITH A DEADLY WEAPON.~~

10 AT THAT POINT AS WE HEARD FROM EDDIE ROMERO,
11 HE TOLD THE DEFENDANT IN RESPONSE TO THESE QUESTIONS, DO
12 YOU FEEL BRAVE? DO YOU FEEL HARD? HE TOLD THE DEFENDANT,
13 LOOK, I WAS TRYING TO PROTECT MY COWORKERS. AT THAT POINT
14 IS WHEN THE DEFENDANT STARTS TO WALK AWAY AND MAKE HIS WAY
15 TO THE BACK OF THE RESTAURANT.

16 AGAIN THAT DOWNWARD SWIPE, EDDIE ROMERO'S
17 BACKED AWAY. DEFENDANT PULLS OUT TWO KNIVES. THE
18 DEFENDANT COULD HAVE STARTED WALKING TO THE BACK, BUT HE
19 MAKES HIMSELF, THE DEFENDANT, A CONCERTED EFFORT TO WALK
20 OVER TO THE VICTIM, COMMIT ANOTHER A.D.W., ANOTHER ASSAULT
~~there's only one alleged.~~
21 WITH A DEADLY WEAPON, AND SAY, DO YOU FEEL BRAVE? DO YOU
22 FEEL HARD?

23 WATCH HIS ARMS. BOOM. AND THEN HE COMES
24 BACK. THE DEFENDANT DIDN'T HAVE TO DO THAT. DO YOU KNOW
25 WHY HE DID THAT? SO THIS GUY WOULDN'T MESS WITH HIM
26 AGAIN. THAT'S WHY HE DID THAT. HE DID IT IN THE FIRST
27 PLACE TO -- HE WAS UPSET WITH EDWARD ROMERO FOR TRYING TO
28 STOP HIM, AND HE GOES UP TO HIM AND COMES WITHIN A FEW

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 12/08/14

CASE NO. VA121164

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: LUCIOUS WILSON

INFORMATION FILED ON 11/07/11.

COUNT 01: 245(A)(1) PC FEL
COUNT 02: 417.8 PC FEL

ON 12/08/14 AT 900 AM IN SOUTHEAST DISTRICT DEPT SES

CASE CALLED FOR HABEAS CORPUS PETITION

PARTIES: YVONNE SANCHEZ (JUDGE) JAMES PATRICK (CLERK)
NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

THE COURT HAS READ AND CONSIDERED THE PETITION FOR WRIT OF
HABEAS CORPUS, SIGNED BUT NOT DATED BY PETITIONER/DEFENDANT,
BUT PROOF OF SERVICE DATED 10/30/14, AND FINDS THAT THE
FOLLOWING APPLY:

THE WRIT OF HABEAS CORPUS IS RESERVED FOR ERRORS OF A

FUNDAMENTAL JURISDICTIONAL OR CONSTITUTIONAL TYPE, RATHER THAN
ERRONEOUS EVIDENTIARY OR PROCEDURAL RULINGS. IN RE HARRIS
(1993) 5 CAL.4TH 813, 828; NO GROUND ALLEGED HERE IS OF A TYPE
COGNIZABLE ON HABEAS CORPUS.

ASSUMING THE FACTS ALLEGED IN THE PETITION ARE TRUE,
PETITIONER FAILS TO ALLEGE FACTS ESTABLISHING A PRIMA FACIE
CASE FOR HABEAS RELIEF. PEOPLE V. DUVALL (1995) 9 CAL.4TH 464,
474-75.

THE PETITION RAISES ISSUES THAT COULD HAVE BEEN RAISED ON
APPEAL, BUT WERE NOT, AND PETITIONER HAS FAILED TO ALLEGE FACTS
ESTABLISHING AN EXCEPTION TO THE RULE BARRING HABEAS
CONSIDERATION OF CLAIMS THAT COULD HAVE BEEN RAISED ON APPEAL.
IN RE RENO (2012) 55 CAL.4TH 428, 490-93; IN RE HARRIS (1993)

PAGE NO. 1

HABEAS CORPUS PETITION
HEARING DATE: 12/08/14

CASE NO. VA121164
DEF NO. 01

DATE PRINTED 12/08/14

5 CAL.4TH 813, 825-26; IN RE DIXON (1953) 41 CAL.2ND 755, 759;
IN RE SMITH (1911) 161 CAL. 208.

THE PETITION RAISES ISSUES WHICH WERE RAISED AND REJECTED ON
APPEAL AND PETITIONER HAS FAILED TO ALLEGE FACTS ESTABLISHING
AN EXCEPTION TO THE RULE BARRING HABEAS CONSIDERATION OF CLAIMS
THAT WERE RAISED ON APPEAL. IN RE RENO (2012) 55 CAL.4TH 428,
478-79; IN RE HARRIS (1993) 5 CAL.4TH 813, 825-26; IN RE
WALTREUS (1965) 62 CAL.2ND 218, 225.

AS TO THE CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL,
PETITIONER HAS FAILED TO SHOW THAT BUT FOR COUNSEL'S ALLEGEDLY
DEFICIENT PERFORMANCE, THERE IS A REASONABLE PROBABILITY THAT A

MORE FAVORABLE OUTCOME WOULD HAVE RESULTED. IT IS NOT ENOUGH
TO SPECULATE ABOUT POSSIBLE PREJUDICE TO BE ACCORDED RELIEF.
PETITIONER HAS FAILED TO SHOW THAT THE PREJUDICIAL EFFECT OF
COUNSEL'S ERRORS WAS A DEMONSTRABLE REALITY. IN RE COX
(2003) 30 CAL.4TH 974, 1016; IN RE CLARK (1993) 5 CAL.4TH 750,
766; STRICKLAND V. WASHINGTON (1984) 466 U.S. 668, 697.

AS TO THE CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE
COUNSEL, DURING PETITIONER'S FIRST APPEAL OF RIGHT, PETITIONER
HAS FAILED TO SHOW THAT APPELLATE COUNSEL'S EXERCISE OF
PROFESSIONAL JUDGMENT WAS DEFICIENT OR THAT, BUT FOR COUNSEL'S
ERRORS, THE OUTCOME OF THE APPEAL WOULD HAVE BEEN DIFFERENT.
APPELLATE COUNSEL IS NOT REQUIRED TO RAISE EVERY NON-FRIVOLOUS
ISSUE AND PETITIONER ALLEGES NO MORE THAN A FAILURE TO RAISE
ISSUES. SMITH V. ROBBINS (2000) 528 U.S. 259, 288; JONES V.
BARNES (1983) 463 U.S. 745, 750-52.

FOR ALL OF THE FOREGOING INDICATED REASONS, THE PETITION IS
DENIED.

DATED: DEC 08 2014

Yvonne T. Sanchez
JUDGE YVONNE T. SANCHEZ
JUDGE OF THE SUPERIOR COURT

A COPY OF THIS MINUTE ORDER IS SENT, VIA U.S. MAIL, TO THE
FOLLOWING:

LUCAS WILSON #V94223
CSP-LAC - D1/217
P.O. BOX 4670
LANCASTER, CA 93539

COURT ORDERS AND FINDINGS:

-PETITION FOR WRIT OF HABEAS CORPUS IS DENIED.

NEXT SCHEDULED EVENT:

PAGE NO. 2

HABEAS CORPUS PETITION
HEARING DATE: 12/08/14

CASE NO. VA121164
DEF NO. 01

DATE PRINTED 12/08/14

PROCEEDINGS TERMINATED

PAGE NO. 3

HABEAS CORPUS PETITION
HEARING DATE: 12/08/14

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,) CASE NO.:
)
 - VS -) VA121164-01
)
 LUCIOUS WILSON,)
)
 DEFENDANT-APPELLANT.)

JUL 25 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE ROGER ITO, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

MARCH 20, 21, 2012

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA D. HARRIS,
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CALIFORNIA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

COPY

VOLUME 3 OF 4
PAGES 901 TO 1037-1200,
PAGES 1201 TO 1315-1500

KELLE WINTERS, C.S.R. #11561
OFFICIAL REPORTER

1 IT'S AT THIS TIME THAT EDWARD ROMERO, HE CAN
2 HEAR THE DEFENDANT HAS BEEN TOLD, YOU GOT TO LEAVE, YOU'RE
3 NOT PERMITTED TO BE HERE. HE HEARD THE DEFENDANT SAYING
4 THAT THE MC DONALD'S EMPLOYEES WERE MESSED UP PEOPLE AND
5 THEY WERE BAD PEOPLE, PRESUMABLY AGAIN BECAUSE MS. VALDEZ
6 WAS NOT PERMITTING HIM TO TALK TO MS. CASTANON, AND THAT
7 AFTER YELLING AND PACING IN FRONT OF THE COUNTER SEVERAL
8 MOMENTS, DURING WHICH TIME THE DEFENDANT WAS TELLING
9 PEOPLE, YOU GUYS SHOULD GET OUT OF HERE BECAUSE SOMETHING
10 BAD IS ABOUT TO HAPPEN, THE DEFENDANT RETURNED TO THE SIDE
11 OF THE COUNTER WHERE MS. VALDEZ IS STILL ON THE PHONE WITH
12 THE POLICE. AS WE SAW FROM THE VIDEO, THE DEFENDANT
13 ATTEMPTED TO PUSH HIS WAY THROUGH.

14 NOW, THE DEFENDANT OBVIOUSLY WANTED TO MAKE A
15 BIG DEAL ABOUT I DIDN'T PUSH OUT OR DO ANYTHING LIKE THAT.
16 THAT'S NOT THE POINT. HE'S SITTING THERE, A LADY IS
17 TRYING TO OBSTRUCT HIM FROM ENTERING A PLACE HE'S NOT
18 PERMITTED TO BE, AND HE'S SITING THERE WALKING AROUND HER.
19 AT ONE POINT YOU'LL SEE HIS ARM COME UP AND PHYSICALLY
20 MAKE CONTACT WITH HER. THAT'S PUSHING, BARGING YOUR WAY
21 IN.

22 YOU ARE NOT ALLOWED TO DO THAT. SOMEBODY
23 TELLS YOU YOU DON'T HAVE A RIGHT TO BE HERE AND THEY HAVE
24 A LEGAL RIGHT TO EXCLUDE YOU FROM THAT PREMISES, YOU
25 CANNOT GO THROUGH AND PUSH YOUR WAY THROUGH THAT PERSON.
26 OBVIOUSLY, THE DEFENDANT THOUGHT THAT CONDUCT WAS OKAY,
27 JUST AS HE THOUGHT HIS ENTIRE CONDUCT THROUGHOUT THIS
28 INCIDENT WAS OKAY AS WELL, WHICH IT IS NOT.

1 AS THE DEFENDANT PUSHED THROUGH MS. VALDEZ,
2 VICTIM EDDIE ROMERO GRABBED THE DEFENDANT FROM BEHIND
3 USING BOTH OF HIS ARMS, REACHING AROUND THE DEFENDANT'S
4 WAIST AREA TO PREVENT HIM GETTING TO THE BACK OF THE AREA
5 WHERE MS. CASTANON WAS AT. AT THAT TIME MS. VALDEZ SAW
6 THE DEFENDANT PRODUCE A KNIFE AND SWIPE IT IN A DOWNWARD
7 MOTION TOWARDS EDDIE ROMERO'S BACK. I'VE CHARACTERIZED
8 THIS MYSELF AS ASSAULT NUMBER 1.

9 NOW, IN THIS CASE THE DEFENDANT WAS ONLY
10 CHARGED WITH ONE COUNT OF ASSAULT WITH A DEADLY WEAPON.
11 WHY HE WASN'T CHARGED WITH MULTIPLE CHARGES IN THIS CASE?
12 I DON'T KNOW BECAUSE I DIDN'T FILE THIS CASE. I JUST TRY
13 CASES.

14 BUT THIS IS THE EVIDENCE THAT WE HAVE AND AS
15 WE HEARD FROM MS. VALDEZ THROUGH HER OWN TESTIMONY THAT
16 SHE SAW THE DEFENDANT AS SOON AS THIS SCUFFLE IS OCCURRING
17 TAKE THE KNIFE, GRAB IT, DO A DOWNWARD-SWIPING MOTION WITH
18 EDWARD ROMERO RIGHT ON HIM TOWARDS HIS BACK AREA. THAT IS
19 A TEXTBOOK, PLAIN AS DAY, BLACK-AND-WHITE ASSAULT WITH A
20 DEADLY WEAPON.

21 NOW, THIS IS NOT CAUGHT ON VIDEO, AS YOU CAN
22 SEE, BECAUSE THERE'S NO CAMERA ANGLE THAT ACTUALLY
23 CAPTURES IT. IF YOU CAN SEE FROM THE FRONT COUNTER VIDEO,
24 THEY GO OFF TO THE SIDE WHERE THAT SCUFFLE OCCURS, AND WE
25 DON'T ACTUALLY SEE THE DEFENDANT DRAW THE KNIFE.

26 IT'S DURING THIS SPECIFIC POINT IN TIME THAT
27 MS. VALDEZ SEES THE DEFENDANT DO THE SWIPING MOTION.
28 UNFORTUNATELY, IT'S JUST NOT CAUGHT ON CAMERA BECAUSE IT'S

1 OFF TO THE SIDE. AND THEN ON THE GRILL FOLDER, WHICH YOU
2 HAVE AS WELL, IT DOESN'T CATCH THAT SPECIFIC PORTION OF
3 AGAIN THAT KIND OF WALKWAY LEADING TO THE BACK.
4 UNFORTUNATELY IT'S NOT CAUGHT ON VIDEO AND WE THEREFORE --
5 WE HAVE TO RELY UPON THE TESTIMONY OF MS. VALDEZ.

6 NOW, SHE WAS ADAMANT THAT SHE OBSERVED THAT
7 HERSELF, NUMBER ONE, AND SHE HAS NO REASON TO LIE
8 WHATSOEVER. SHE'S COMING IN, TELLING YOU WHAT SHE
9 OBSERVED. SHE NEVER KNEW THE DEFENDANT BEFORE THIS DAY.
10 SHE HASN'T HAD ANY CONTACT WITH HIM SINCE THEN, AND SHE
11 HAS NO REASON TO LIE.

12 AND AT THIS POINT LET ME CALL YOUR ATTENTION
13 TO JURY INSTRUCTION NUMBER 301. IT'S SINGLE WITNESS
14 TESTIMONY. THE TESTIMONY OF ONLY ONE WITNESS CAN PROVE
15 ANY FACT IF YOU BELIEVE THAT WITNESS'S TESTIMONY.

16 REALLY THIS IS A CREDIBILITY DETERMINATION FOR
17 YOU, THE JURORS, TO MAKE. IF YOU BELIEVE HER, THE
18 DEFENDANT COMMITTED ASSAULT; IF YOU DON'T BELIEVE HER, YOU
19 DON'T BELIEVE HER. THAT'S OKAY TOO. YOU ARE THE SOLE
20 ARBITERS OF CREDIBILITY. IT'S UP TO YOU TO DETERMINE
21 WHETHER THAT PERSON YOU SAW TESTIFY IS TELLING YOU THE
22 TRUTH OR WHETHER SHE WASN'T. IT'S UP TO YOU TO DECIDE.

23 AT THAT POINT WHEN SHE SAW THE DEFENDANT DO
24 THIS, SHE YELLED OUT, HE HAS A KNIFE, TO WARN EDDIE ROMERO
25 AND OTHER COWORKERS. AND UPON HEARING THAT THE DEFENDANT
26 HAD A KNIFE, VICTIM ROMERO IMMEDIATELY LET GO OF THE
27 DEFENDANT AND BACKED AWAY FROM HIM, AND AT THAT TIME THE
28 DEFENDANT FACED THE VICTIM, HELD THE KNIFE IN HIS RIGHT

1 HAND, BLADE DOWN, AND THEN THRUST THE KNIFE IN VICTIM
2 ROMERO'S DIRECTION.

3 AND I'LL SHOW YOU THE MOTION AFTER WE HAVE A
4 CHANCE TO LOOK AT IT ON VIDEO. LET'S WATCH THE VIDEO HERE
5 AND I'LL START -- IT WILL START AT 11:22 AND 37 SECONDS.
6 RIGHT NOW IT'S AT 11:21 AND 38. LET'S WATCH THIS HERE.

7

8 (VIDEO PLAYED AT THIS TIME.)

9

10 MR. RAMADAN: AGAIN WE SEE THE DEFENDANT HERE
11 DEMANDING TO SPEAK TO MS. VALDEZ, STANDING IN HIS WAY.
12 DEFENDANT LOOKS LIKE HE'S TRYING TO MAKE HIS WAY IN THERE.
13 SHE PUT HER ARM OUT TO STOP HIM. THE DEFENDANT OBVIOUSLY
14 IS NOT PLEASED WITH THAT. SHE HAS HER ARM OUT AGAIN TO
15 STOP THE DEFENDANT FROM GOING IN THERE.

16 NOW THIS IS WHERE THE DEFENDANT GOES AROUND TO
17 OTHER PEOPLE. HE'LL TELL THIS LADY AND CHILD, GET OUT OF
18 HERE. YOU CAN SEE THEM WALKING AWAY. THIS OTHER LADY WHO
19 TELLS DOESN'T SEEM TO BE TOO CONCERNED ABOUT THE
20 DEFENDANT'S WARNING, BUT SHE WANTS TO GET HER FOOD
21 OBVIOUSLY, AND THAT'S FINE.

22 SO NOW THE DEFENDANT'S GOING TO REAPPEAR.
23 MS. VALDEZ AGAIN PUT HER ARM OUT TO STOP THE DEFENDANT.
24 HE TRIES TO GET PAST HER. NOW HE'S GOING TO START PUSHING
25 HIS WAY THROUGH. LOOK AT RIGHT ARM GO ON HER, AND VICTIM
26 ROMERO IS GOING TO GRAB HER -- OR GRAB HIM, I SHOULD SAY.

27 SEE THAT PART? IT GOES OFF CAMERA. IT'S IN
28 THAT SPLIT SECOND. THE DEFENDANT ALREADY HAS THE WEAPON

1 DRAWN. AND THIS IS AT 11:22 AND 37 SECONDS.

2 IF YOU LOOK AT IT THERE AT THAT POINT, THE
3 DEFENDANT HAS THE KNIFE IN HIS RIGHT HAND, AND HE'S
4 ALREADY HAD IT DRAWN. THAT WAS SEEN BY MS. VALDEZ AND WAS
5 VERY A SPECIFIC SPLIT SECOND OF TIME OR SECONDS THEY WERE
6 OFF THE CAMERA ANGLE.

7 THIS IS WHAT I'M CHARACTERIZING AS ASSAULT
8 NUMBER 2. WHAT WE'RE ABOUT TO SEE RIGHT NOW I'M
9 CHARACTERIZING IT AS ASSAULT NUMBER 2. AS YOU'LL SEE
10 AGAIN, WE'RE STARTING AT THE SAME POINT IN TIME. WE LEFT
11 OFF ON THE OTHER CLIP, 11:22 AND 37 SECONDS. THE
12 DEFENDANT HAS THE KNIFE POSITIONED IN HIS RIGHT HAND LIKE
13 SUCH. AS WE'LL SEE, THE DEFENDANT WILL TAKE A STEP
14 FORWARD TOWARDS VICTIM ROMERO, AND HE DOES A
15 DOWNWARD-SWIPE MOTION WITH HIS RIGHT HAND, AND WE'LL WATCH
16 THIS A FEW TIMES.

17
18 (VIDEO PLAYED AT THIS TIME.)

19
20 MR. RAMADAN: TAKE A LOOK AT THAT AND ALSO LOOK AT
21 EDDIE ROMERO. WATCH HIS REACTION TO THAT. HERE WE GO.
22 THE DEFENDANT IS GOING TO STEP UP, DOWNWARD SWIPE,
23 DEFENDANT STEPS UP, DOWNWARD TO SWIPE.

24 I'M GOING TO DO IT AGAIN. THIS TIME LOOK,
25 WATCH VICTIM EDDIE ROMERO. HE'LL TAKE A LITTLE HOP BACK.
26 YOU SEE THAT? YOU KNOW WHY HE DID THAT? BECAUSE A GUY IS
27 COMING AT HIM WITHIN 3 FEET OR SO CARRYING A KNIFE AND
28 DOING THIS.

1 WE KNOW THAT THE KNIFE IN THIS CASE WAS
2 APPROXIMATELY 10 TO 12 INCHES LONG. I HAVE A RULER HERE
3 THAT'S 15 INCHES. CERTAINLY I DIDN'T BRING A KNIFE INTO
4 COURT TODAY BECAUSE, AS A LAW-ABIDING CITIZEN, I'M NOT
5 GOING TO BRING KNIVES INTO PUBLIC PLACES AND START DOING
6 ACTIONS WITH THEM LIKE THE DEFENDANT DID.

7 BUT I'M GOING TO HOLD THIS ITEM HERE AT THE
8 10-INCH MARK. I'M HOLDING IT AT THE 10-INCH MARK. THE
9 DEFENDANT TAKES A STEP FORWARD AND GOES LIKE THIS, AND
10 AGAIN YOU'LL SEE VICTIM EDWARD ROMERO. HE ACTUALLY HOPS
11 BACK IN ORDER TO GET OUT OF THE WAY SO HE WON'T GET
12 ATTACKED BY THIS GUY.

13 LOOK AT THE PROXIMITY OF THESE PEOPLE. THEY
14 ARE, LIKE, 3 TO 4 FEET AWAY FROM EACH OTHER. IF YOU DO A
15 STABBING, SWIPING MOTION DOWN, THAT IS AN ASSAULT WITH A
16 DEADLY WEAPON, ESPECIALLY WHEN SOMEONE IS WITHIN A FEW
17 FEET OF YOU.

18 NOW, AS YOU HEARD ME MENTION EARLIER, IF YOU
19 NOTICE THROUGH ALL THIS VIDEO, THE VIDEO'S CHOPPY. I
20 DON'T KNOW IF YOU SEE THAT. THERE'S A REASON FOR THAT.
21 I'M NOT SURE IF ANYBODY'S FAMILIAR WITH IT. MOST
22 SURVEILLANCE VIDEO IS CHOPPY BECAUSE A VIDEO CAMERA -- AND
23 IT DEPENDS ON THE CAMERA -- CAN ONLY CATCH A CERTAIN
24 NUMBER OF FRAMES PER SECOND.

25 WHEN WE WATCH A MOVIE, EVERYTHING LOOKS LIKE
26 IT'S HAPPENING IN REAL LIFE. WE DON'T SEE THAT CHOPPINESS
27 BECAUSE WHEN THEY EDIT A FILM THEY MAKE IT HAVE A CERTAIN
28 NUMBER OF FRAMES PER SECOND SO IT'S CONSISTENT WITH WHAT

1 THE HUMAN EYE CAN SEE.

2 AS I'M WALKING RIGHT NOW, LOOKS LIKE A SMOOTH
3 WALKING MOTION. I'M NOT LIKE THAT (INDICATING), AND
4 THAT'S KIND OF THE CHOPPINESS THAT WE SEE.

5 SO THE IMPORTANCE OF THAT, LADIES AND
6 GENTLEMEN -- ACTUALLY, BEFORE I GET TO THAT, ANOTHER WAY
7 TO ILLUSTRATE IT IS -- I DON'T KNOW IF YOU EVER SEEN IT --
8 SOMEBODY TAKES A PAD OF PAPER AND DRAWS A CARTOON OF
9 SOMEBODY STARTING HERE AND ENDING UP HERE. IF YOU FLIP
10 THROUGH THAT, THE FASTER YOU FLIP THROUGH IT, THE MORE
11 SMOOTH IT LOOKS, THE MORE IT'S CONSISTENT WITH WHAT THE
12 HUMAN EYE CAN SEE. YOU START GOING THROUGH IT SLOWLY, IT
13 HAS A CHOPPINESS EFFECT.

14 THAT IS WHAT WE'RE SEEING IN HERE. CERTAIN
15 SPLIT SECONDS IN TIME ARE BEING LOST BY THIS VIDEO. IT'S
16 JUST THAT WAY. THAT'S THE SCIENCE OF IT. THAT'S WHAT'S
17 HAPPENING HERE. SO THAT CHOPPINESS IS BECAUSE IT ONLY
18 CATCHES A CERTAIN NUMBER OF FRAMES PER SECOND. IT VARIES
19 FROM CAMERA TO CAMERA.

20 THAT'S IMPORTANT HERE BECAUSE YOU LOSE THE
21 IMPACT, SIGNIFICANCE OF MOVEMENTS BECAUSE OF A CERTAIN
22 VIDEO. THAT'S WHY WE HAVE THE TESTIMONY OF VICTIMS AND
23 WITNESSES TO COVER THAT. IT'S NOT THAT, OH, WE HAVE
24 VIDEO, IT DOESN'T MATTER WHAT THE VICTIMS AND WITNESSES
25 SAY. NO. ALL THE EVIDENCE MUST BE TAKEN INTO
26 CONSIDERATION TOGETHER IN CONJUNCTION WITH EACH OTHER.

27 SO AT THIS POINT IN TIME WHEN A PERSON SAYS
28 THIS IS WHAT I OBSERVED, IT MIGHT LOOK DIFFERENT ON VIDEO.

1 THEY'RE SEEING SOMETHING IN REAL LIFE. WE'RE LOSING SPLIT
2 SECONDS IN TIME. EVERY TIME THAT THAT THING MISSES A
3 FRAME, THIS MOTION HERE -- WATCH THE MOTION. IT'S LIKE
4 ONE MOMENT HE'S RIGHT HERE, BUT THEN AT THE NEXT MOMENT
5 HE'S HERE. WE MISSED THE SWIPE BECAUSE WE LOST THE SPLIT
6 SECONDS IN TIME.

7 KEEP IN MIND HOW FAST AN ASSAULT CAN HAPPEN.
8 BOOM, JUST LIKE THAT. THAT'S VERY IMPORTANT. WE LOSE
9 THOSE SPLIT SECONDS IN TIME. LET'S WATCH IT AGAIN.

10

11 (VIDEO PLAYED AT THIS TIME.)

12

13 MR. RAMADAN: THE DEFENDANT IS GOING TO COME DOWN,
14 BOOM. JUST A DOWNWARD SWIPING MOTION, AND EDWARD ROMERO
15 HAS TO BACK OUT OF THE WAY. THAT'S ASSAULT NUMBER 2 IN
16 THIS CASE.

17 SO NOW WATCH THE REST OF THIS CLIP. THE
18 DEFENDANT NOW PULLS OUT THE SECOND KNIFE, STARTS SAYING
19 THINGS TO THE PEOPLE OVER COUNTER. ONE OF THE MC DONALD'S
20 EMPLOYEES IS SO SCARED SHE HOPS OVER RIGHT AWAY, OBVIOUSLY
21 UNDERSTANDABLY.

22 SO NOW THE DEFENDANT IS GOING TO APPROACH THE
23 VICTIM. DID YOU SEE HIS ARMS RIGHT THERE? DID YOU SEE
24 HOW HE DOES THAT? HE'S HOLDING TWO KNIVES IN HIS ARMS AND
25 GOES LIKE THAT AT THE GUY WITHIN 2 FEET OF HIM. THAT IS
26 ANOTHER ASSAULT RIGHT THERE, LADIES AND GENTLEMEN, BECAUSE
27 THAT IS A THREAT TO DO PHYSICAL BODILY HARM WITH THOSE
28 KNIVES UPON THE PERSON.

1 YEAH, WHEN THE PERSON -- WHEN THE DEFENDANT
2 GOES UP TO HIM, YEAH, HE HAS HIS ARMS AT HIS SIDE LIKE
3 THIS, BUT THEN HE GETS WITHIN A COUPLE FEET AND DOES ONE
4 OF THESE MOTIONS. WE SEE KIDS DO THAT TO KIDS ALL THE
5 TIME. IT'S TRYING TO MAKE THEM FLINCH. I'M ABOUT TO HIT
6 YOU. OBJECTIVELY, AS A REASONABLE PERSON, YOU LOOK AT
7 THAT, OH, MY GOD, THAT GUY IS ABOUT TO DO SOMETHING.

8 THAT'S EXACTLY WHAT THE DEFENDANT DID THERE.
9 HE DIDN'T HAVE HANDS DOWN. WE CAN SEE HE RAISED HIS ARMS
10 UP AND DOES ONE OF THESE MOTIONS. THAT'S CLEAR FROM THE
11 VIDEO, EVEN WITH THE LOSS OF THE LITTLE SPLIT SECONDS IN
12 TIME.

13 EDWARD ROMERO TESTIFIED WHAT HE SAW AND
14 OBSERVED. THIS VIDEO -- OBVIOUSLY, IT'S VIDEO. THAT'S
15 GREAT THAT WE HAVE IT, BUT IT'S NOT NECESSARILY GOING TO
16 ACCURATELY CAPTURE THE WAY IT WAS PERCEIVED IN REAL LIFE
17 BY A VICTIM.

18 SO AGAIN AS WE CAN SEE HERE, THIS IS THAT
19 FRAME. REMEMBER THE LAST CLIP STARTED AT 11:22 AND 37.
20 THIS IS 11:22 AND 38. AT 11:22:37 THE DEFENDANT'S LIKE
21 THIS. AT -:38 HE'S LIKE THIS, AND THAT'S IMMEDIATELY
22 PROCEEDING TO THE DOWNWARD SWIPE THAT VICTIM EDWARD ROMERO
23 HAD TO HOP BACK FROM.

24 AGAIN WE SAW THE DEFENDANT HAS PRODUCED THE
25 TWO KNIVES. HE'S HOLDING THEM, RUNNING, BLADE DOWN ALONG
26 HIS FOREARMS. YOU CAN SEE THEM THERE. AND THEN AFTER
27 PRODUCING THE SECOND KNIFE, AS WE SAW, THE DEFENDANT
28 RE-APPROACHES VICTIM ROMERO WHILE HOLDING THE TWO KNIVES.

1 HE COMES WITHIN 2 TO 3 FEET OF HIM. AGAIN THIS WAS
2 ASSAULT NUMBER 3, AS I CHARACTERIZED IT EARLIER.

3 NOT ONLY DO WE SEE HIM DO THIS KIND OF THIS
4 LUNGE AT THE VICTIM, HE SAYS TO THE VICTIM AT THAT TIME,
5 DO YOU FEEL BRAVE? DO YOU FEEL HARD? THAT RIGHT THERE IS
6 A -- IT'S A VERBAL -- I'M NOT GONNA CALL IT A THREAT.
7 IT'S A WAY OF INSTILLING FEAR IN THE VICTIM. YOU THINK
8 YOU'RE A TOUGH GUY? YOU DON'T WANT TO MESS WITH THIS.

9 WHEN I ASKED EDWARD ROMERO HOW DID HE CONSTRUE
10 THOSE QUESTIONS, HE SAID IT'S LIKE HE WAS ASKING ME IF I
11 WAS A TOUGH GUY, AND THE REASON THE DEFENDANT DID THAT IS
12 BECAUSE EDWARD ROMERO, MUCH TO HIS CREDIT, HAD THE BRAVERY
13 TO TRY TO STEP IN AND STOP THIS GUY FROM COMMITTING A
14 TRESPASS AND POSSIBLY HURTING ONE OF HIS COWORKERS.

15 EDWARD ROMERO IS TRYING TO PROTECT HIS
16 COWORKERS, AND IT'S THE DEFENDANT WHO'S UPSET THAT
17 SOMEBODY'S STOPPING HIM FROM DOING WHAT HE WANTS TO DO.
18 HE GOES UP TO THIS GUY, TELLS HIM, DO YOU FEEL BRAVE AND
19 DO YOU FEEL HARD. HE DOES ONE OF THESE. THAT IS ANOTHER
20 ASSAULT. AND HE'S CARRYING TWO BIG, BUTCHER KNIVES IN HIS
21 HANDS. THAT'S SCARY STUFF. THAT IS NOT INSIGNIFICANT,
22 NOT TRIVIAL.

23 THE DEFENDANT WANTS YOU TO ACT LIKE THIS IS NO
24 BIG DEAL. THAT IS A BIG DEAL IF SOMEBODY COMES IN 2 TO 3
25 FEET OF YOU AND DOES THIS. EDWARD ROMERO WAS SCARED AS
26 HELL AND UNDERSTANDABLY SO. AND THAT, LADIES AND
27 GENTLEMEN, IS ASSAULT NUMBER 3.

28 NOW, THE REASON I BREAK IT UP LIKE THIS IS

1 BECAUSE THE DEFENDANT'S ONLY CHARGED WITH ONE COUNT. MY
2 POINT IS YOU CAN ACTUALLY HANG YOUR HAT ON ANY ONE OF
3 THESE MOTIONS: THE ONE WHERE HE SWIPED DOWN AT THE
4 DEFENDANT'S BACK -- I'M SORRY, AT THE VICTIM'S BACK WHEN
5 IT'S OFF CAMERA; THE SECOND ONE WHAT WE SAW THROUGH THE
6 DEFENDANT WHEN HE DOES ONE OF THESE; AND THEN THE THIRD
7 ONE IS HERE WHERE HE COMES AT THE GUY LIKE THIS WITH TWO
8 KNIVES. YOU CAN HANG YOUR HAT ON ANY ONE OF THOSE AND
9 HE'D BE GUILTY OF ASSAULT WITH A DEADLY WEAPON.

10 AT THAT POINT AS WE HEARD FROM EDDIE ROMERO,
11 HE TOLD THE DEFENDANT IN RESPONSE TO THESE QUESTIONS, DO
12 YOU FEEL BRAVE? DO YOU FEEL HARD? HE TOLD THE DEFENDANT,
13 LOOK, I WAS TRYING TO PROTECT MY COWORKERS. AT THAT POINT
14 IS WHEN THE DEFENDANT STARTS TO WALK AWAY AND MAKE HIS WAY
15 TO THE BACK OF THE RESTAURANT.

16 AGAIN THAT DOWNWARD SWIPE, EDDIE ROMERO'S
17 BACKED AWAY. DEFENDANT PULLS OUT TWO KNIVES. THE
18 DEFENDANT COULD HAVE STARTED WALKING TO THE BACK, BUT HE
19 MAKES HIMSELF, THE DEFENDANT, A CONCERTED EFFORT TO WALK
20 OVER TO THE VICTIM, COMMIT ANOTHER A.D.W., ANOTHER ASSAULT
21 WITH A DEADLY WEAPON, AND SAY, DO YOU FEEL BRAVE? DO YOU
22 FEEL HARD?

23 WATCH HIS ARMS. BOOM. AND THEN HE COMES
24 BACK. THE DEFENDANT DIDN'T HAVE TO DO THAT. DO YOU KNOW
25 WHY HE DID THAT? SO THIS GUY WOULDN'T MESS WITH HIM
26 AGAIN. THAT'S WHY HE DID THAT. HE DID IT IN THE FIRST
27 PLACE TO -- HE WAS UPSET WITH EDWARD ROMERO FOR TRYING TO
28 STOP HIM, AND HE GOES UP TO HIM AND COMES WITHIN A FEW

1 FEET WITHIN HIS PERSONAL SPACE WITH TWO KNIVES AND TELLS
2 HIM, HEY, YOU DON'T WANT TO MESS WITH THIS, HE'S TRYING TO
3 INTIMIDATE EDWARD ROMERO, MAKE NO MISTAKE.

4 THE DEFENDANT WANTS YOU TO BELIEVE HE CARED
5 ABOUT EDWARD ROMERO'S WELFARE. NO, HE'S SITTING THERE
6 SAYING DON'T TRY THAT AGAIN BECAUSE I'M GONNA MESS YOU UP
7 IF YOU DO.

8 AS THE DEFENDANT MADE HIS WAY TOWARD THE BACK
9 OF THE RESTAURANT, AS WE SAW IN THE VIDEO AGGRESSIVELY
10 APPROACHING VALDEZ AND CASTANON CARRYING THE TWO BUTCHER
11 KNIVES -- WE'LL WATCH IT HERE -- MS. CASTANON IS CLEARLY
12 CRYING AND UPSET, MS. VALDEZ VERY BRAVELY TRYING TO STAY
13 IN BETWEEN MS. CASTANON AND THE DEFENDANT.

14 AND THERE YOU CAN SEE THE DEFENDANT HOLDING
15 THE TWO KNIVES AT 11:23:06, AND THEN 11:23:07 HE HAS THE
16 TWO KNIVES IN HIS HAND AGAIN. THEY'RE POINTED AT HIM.

17 NOW, THIS PACING BACK AND FORTH, IT CONTINUED
18 A FEW TIMES, THE WHOLE TIME HE'S CARRYING, WIELDING THESE
19 TWO KNIVES. AS THE DEFENDANT WALKED THROUGHOUT THE
20 RESTAURANT, HE'S YELLING THINGS OUT LIKE, I LOVE HER. WHY
21 DOES SHE HE HAVE TO LEAVE ME? SHE KICKED ME OUT. ALL I
22 WANT IS EVELIA, CLEARLY AGAIN DISTRAUGHT OVER WHATEVER
23 ISSUES HE WAS HAVING WITH MS. CASTANON.

24 AND WHILE ALL THIS IS OCCURRING, MS. VALDEZ,
25 AGAIN TO HER CREDIT, STAYED ON THE PHONE WITH 9-1-1 AND
26 TRIED TO POSITION HERSELF IN BETWEEN MS. CASTANON AND THE
27 DEFENDANT TO PREVENT THE DEFENDANT FROM DOING GOD KNOWS
28 WHAT. SHE HAS NO IDEA.

1 JUST BECAUSE THE DEFENDANT'S SAYING -- I WANT
2 YOU TO ACCEPT THIS AS TRUE THAT THE DEFENDANT WAS SAYING
3 I'M NOT HERE TO HURT ANYBODY. JUST BECAUSE SOME GUY WITH
4 KNIVES YOU DON'T KNOW IS SAYING THAT, YOU'LL TAKE HIS WORD
5 FOR IT. OF COURSE YOU'RE NOT GOING TO. SHE, TO HER
6 CREDIT, VERY BRAVELY IS TRYING TO PREVENT THE DEFENDANT
7 FROM DOING SOMETHING, AT LEAST FROM HER PERSPECTIVE.

8 SO AS YOU CAN SEE HERE AGAIN FROM THIS GRILL
9 FOLDER -- BY THE WAY, SORRY. FOR A MOMENT LET ME STOP IT
10 HERE. IF YOU NOTICE, THIS CAMERA ANGLE FOR THE GRILL ONLY
11 GOES UP TO A CERTAIN POINT. IT DOESN'T CAPTURE THAT
12 MOMENT IN TIME THAT MS. VALDEZ SAW WHEN EDWARD ROMERO IS
13 STRUGGLING WITH THE DEFENDANT AND THE DEFENDANT PULLS THE
14 KNIFE AND DOES ONE OF THESE.

15 WE'RE NOT GONNA SEE THAT ON THE GRILL, AND
16 WE'RE NOT GOING TO SEE IT ON THE FRONT COUNTER,
17 UNFORTUNATELY. THAT HAPPENS, CAMERA ANGLES DON'T ALWAYS
18 CAPTURE EVERYTHING. THAT'S WHY IT'S NOT JUST LOOKING AT
19 THE VIDEO, NO. YOU HAVE TO TAKE EVERYTHING IN CONJUNCTION
20 WITH EACH OTHER, THE VIDEO AND THAT GETS COLORED -- THE
21 GAPS IN TIME, THE CAMERA ANGLES THAT ARE MISSED GETS
22 COLORED BY THE VICTIM AND WITNESS TESTIMONY.

23 NOW, AGAIN AS THE DEFENDANT CONTINUED HIS
24 ARMED AND HIGHLY DANGEROUS TIRADE, HE CUT HIMSELF ON HIS
25 ARMS, AND HE BEGAN PURPOSELY THROWING AND FLICKING HIS
26 BLOOD ALL OVER THE RESTAURANT. AS YOU HEARD FROM THE
27 LOSS-PREVENTION AGENT JONAS PENA, HE OBSERVED THE
28 DEFENDANT COME AND THREW HIS BLOOD ALL OVER THE PLACE.

1 GREAT BODILY INJURY MEANS
2 SIGNIFICANT INJURY -- SIGNIFICANT OR
3 SUBSTANTIAL PHYSICAL INJURY. IT IS
4 AN INJURY THAT IS GREATER THAN MINOR
5 OR MODERATE HARM.

6 A PERSON WHO IS EMPLOYED AS A
7 POLICE OFFICER BY THE LOS ANGELES
8 COUNTY SHERIFF'S DEPARTMENT IS A
9 PEACE OFFICER.

10 THE DEFENDANT IS CHARGED WITH
11 ASSAULT WITH A DEADLY WEAPON IN
12 COUNT 1. THE PEOPLE HAVE PRESENTED
13 EVIDENCE OF MORE THAN ONE ACT TO
14 PROVE THAT THE DEFENDANT COMMITTED
15 THIS OFFENSE. YOU MUST NOT FIND THE
16 DEFENDANT GUILTY UNLESS ALL OF YOU
17 AGREE THAT THE PEOPLE HAVE PROVED
18 THAT THE DEFENDANT COMMITTED AT
19 LEAST ONE OF THESE ACTS AND YOU ALL
20 AGREE ON WHICH ACT HE COMMITTED.

21 WHEN YOU GO TO THE JURY ROOM,
22 THE FIRST THING YOU SHOULD DO IS
23 CHOOSE A FOREPERSON. THE FOREPERSON
24 SHOULD SEE TO IT YOUR DISCUSSIONS
25 ARE CARRIED OUT IN AN ORGANIZED WAY
26 AND THAT EVERYONE HAS A FAIR CHANCE
27 TO BE HEARD.

28 IT IS YOUR DUTY TO TALK WITH

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

LUCIOUS WILSON, Petitioner

vs.

J. SOTO, WARDEN, Respondent

CERTIFICATE OF SERVICE

I, MORIAH S. RADIN, a Deputy Federal Public Defender in the Office of the Federal Public Defender who was appointed as counsel for Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006(A)(b), hereby certify that on September 14, 2018, a copy of **APPENDIX TO PETITION FOR WRIT OF CERTIORARI** was mailed postage prepaid to:

E. Carlos Dominguez
Deputy Attorney General
California Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1256
DocketingLAAWT@doj.ca.gov
Carlos.Dominguez@doj.ca.gov
Counsel for Respondent

All parties required to have been served have been served. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 14, 2018 at Los Angeles, California.


MORIAH S. RADIN*

*Counsel of Record for Petitioner